

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

UNITED STATES OF AMERICA, et al.

Plaintiffs,

Civil Action No.
1:21-cv-11558-LTS

v.

AMERICAN AIRLINES GROUP, INC.,
et al.,

Defendants.

BEFORE THE HONORABLE LEO T. SOROKIN, DISTRICT JUDGE

BENCH TRIAL
Day 8

Friday, October 7, 2022
9:00 a.m.

John J. Moakley United States Courthouse
Courtroom 13
One Courthouse Way
Boston, Massachusetts

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Official Court Reporter
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A P P E A R A N C E S

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EXHIBITS

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Number 49 47

P R O C E E D I N G S

(In open court.)

THE COURT: Ready to go?

MR. JONES: Yes, sir, we are. The plaintiffs call Paul Swartz of American Airlines.

THE COURT: All right.

MR. JONES: And Maisie Baldwin of the Department of Justice will conduct the examination.

THE COURT: All right.

MS. BALDWIN: Your Honor, the Court should have two copies of the binder for Mr. Swartz already.

THE COURT: Yes. I think so.

THE DEPUTY CLERK: Sir, if you could raise your right hand.

(Witness duly sworn.)

THE DEPUTY CLERK: And can you please state your name for the record.

THE WITNESS: Paul Swartz.

THE COURT: Ms. Baldwin, right?

MS. BALDWIN: Yes.

THE COURT: Go right ahead.

1 **PAUL SWARTZ**

2 having been duly sworn, testified as follows:

3 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS**

4 BY MS. BALDWIN:

5 **Q.** Good morning, Mr. Swartz. You should have just received
6 a binder that has some tabbed documents inside. Throughout
7 the course of your examination, I'll let you know when to
8 open the binder and where to turn. You'll also see documents
9 displayed on your screen. Does that make sense?

10 **A.** Yes.

11 THE COURT: They'll probably be in both places, in
12 other words. They'll be in both places. They'll be in
13 paper, the whole thing; and the screen only has one page,
14 typically, at a time.

15 THE WITNESS: Okay. Thank you.

16 BY MS. BALDWIN:

17 **Q.** The screen will also be the redacted version, since it
18 will be publicly facing, so you may see words on your
19 version of exhibit that are not on the screen, and I would
20 just caution you not to reveal any of that redacted
21 information. Okay?

22 **A.** Sure.

23 **Q.** Mr. Swartz, you're currently employed by American
24 Airlines as the regional sales manager for the greater
25 Washington, DC, and New England areas; is that right?

1 **A.** I am the regional sales director.

2 **Q.** Is that a title you've held since July of 2020?

3 **A.** No. I was recently promoted to regional sales director
4 in the last 60 days.

5 **Q.** Congratulations.

6 **A.** Thank you.

7 **Q.** From September of 2017 until July of 2020, were you the
8 district sales manager for Boston at American?

9 **A.** I was.

10 **Q.** And you're aware of the Northeast Alliance agreement
11 between American and JetBlue?

12 **A.** Yes, I am.

13 **Q.** And the Northeast Alliance permits American and JetBlue
14 to jointly contract with its corporate customers; is that
15 right?

16 **A.** Yes.

17 **Q.** Meaning that, instead of having one contract for American
18 and a separate contract for JetBlue, corporate customers can
19 have one single contract for both carriers, right?

20 **A.** That is one of the options, correct.

21 **Q.** I'd like to discuss some competition between American and
22 JetBlue on specific routes, starting with Boston and DCA. If
23 you would, please turn in your binder to Plaintiffs'
24 Exhibit 202?

25 MS. BALDWIN: Your Honor, 202 has been admitted

1 into evidence. It does not contain redactions.

2 THE COURT: Okay.

3 BY MS. BALDWIN:

4 Q. Are you there, Mr. Swartz?

5 A. I am.

6 Q. And this is an e-mail thread describing competitive
7 changes in the airline industry?

8 A. Yes.

9 Q. And this is dated in December of 2018?

10 A. It is.

11 Q. Let's start at the third page of this document. You'll
12 see an e-mail from a Mr. Mike Domagala. Am I pronouncing
13 that correctly, Mr. Swartz?

14 A. Yes.

15 Q. And Mr. Domagala at the time was a senior network analyst
16 for American?

17 A. I'm not sure of his position.

18 Q. Did Mr. Domagala send these types of e-mails to you or
19 any members of your team?

20 A. He did. Actually, he sent it to me. I'm not sure -- I
21 don't think the rest of my team received these. I would
22 forward them out to my team.

23 Q. Okay. It looks like the title of his e-mail is "Industry
24 Highlights." Do you see that?

25 A. I do.

1 **Q.** And if go down to the second main heading, you'll see
2 "Delta published service on three new Boston routes and
3 announced a fourth, reducing DCA frequencies to balance slot
4 levels." Do you see that?

5 **A.** I do.

6 **Q.** Here Mr. Domagala is reporting that Delta added service
7 between Boston and DCA?

8 **A.** Yes.

9 **Q.** And that was six daily flights on that route?

10 **A.** Correct.

11 **Q.** Let's go to the e-mail at the bottom of the first page of
12 this exhibit. It has a time stamp, 2:31 p.m.?

13 **A.** Okay.

14 **Q.** Do you see that?

15 **A.** I do. Is this the e-mail that I wrote?

16 **Q.** Yes, sir.

17 **A.** Okay. Uh-huh.

18 **Q.** In this part of the e-mail thread, you and a number of
19 your colleagues at American were talking specifically about
20 the Boston-DCA route?

21 **A.** Yes.

22 **Q.** And you wrote that at the time, Boston DCA was already a
23 highly competitive shuttle route; is that right?

24 **A.** That's what I wrote, yes.

25 **Q.** And in the second sentence of this e-mail, you write

1 that, "Although Delta is entering the market, American's big
2 competition is JetBlue"; is that right?

3 **A.** Yes.

4 **Q.** And you described JetBlue as having very low pricing with
5 tons of flexibility, including fares as low as a hundred
6 dollars between Boston and DCA?

7 **A.** I wrote that as well as Delta was getting aggressive in
8 that marketplace.

9 **Q.** Well, in fact, you wrote that you weren't sure if Delta
10 would get as aggressive at JetBlue; is that right?

11 **A.** I don't see where I wrote -- I wrote that. Sorry.

12 Oh, yes, I do see that. Okay.

13 **Q.** All right. You can put that document aside, Mr. Swartz.
14 And if you would please turn to PX253 and we'll talk a bit
15 more about Boston-DCA.

16 **A.** I see that document.

17 MS. BALDWIN: Your Honor, PX253 has been admitted
18 into evidence and we will publish a redacted version.

19 THE COURT: Fine.

20 BY MS. BALDWIN:

21 **Q.** This is an e-mail thread from July of 2019; is that
22 right?

23 **A.** Yes.

24 **Q.** Let's go to the first in time e-mail, with a time stamp
25 of 4:41 p.m. This is an e-mail from a Mr. Steven Gilman; is

1 that right?

2 **A.** Correct.

3 **Q.** And at the time of this e-mail, Mr. Gilman was the
4 manager of sales planning for American Airlines?

5 **A.** That is correct.

6 **Q.** Here, Mr. Gilman is writing to you and somebody named
7 Ricki. Would that be Ms. Reichard?

8 **A.** Yes, correct.

9 **Q.** And at the time of this e-mail, was Ms. Reichard the
10 regional sales director for Boston and Philadelphia?

11 **A.** Yes.

12 **Q.** Did you report to Ms. Reichard?

13 **A.** I did.

14 **Q.** Here Mr. Gilman is writing to you and Ms. Reichard that
15 Boston-DCA was a point of concern in a recent network
16 planning meeting?

17 **A.** Yes.

18 **Q.** And Mr. Gilman writes that Boston-DCA was a point of
19 concern, because Boston-DCA was the poorest performing market
20 in DC based on profitability?

21 **A.** That's what he wrote.

22 **Q.** Let's go to your response, which you sent at 4:02. Here,
23 you write, "The problem is JetBlue going to 15 flights a day
24 and offering our corps a \$99 Y-up fare." Do you see that?

25 **A.** I do.

1 Q. The "corps" here being American's corporate customers?

2 A. That is correct.

3 Q. So from your e-mail, I gather JetBlue increased its
4 frequencies on Boston-DCA to 15 daily flights?

5 A. Yes.

6 Q. And you identified this increase in frequency by JetBlue
7 as a problem for American?

8 A. Yes.

9 Q. You also wrote that JetBlue started offering American's
10 corporate customers a \$99 Y-up fare; is that right?

11 A. That is correct.

12 Q. And a Y-up fare is one of American's fully -- sorry, one
13 of JetBlue's fully refundable fares?

14 A. Yes, correct.

15 Q. And you identified JetBlue's \$99 Y-up fare between Boston
16 and DCA as another problem for American. Is that right?

17 A. Sorry. Repeat that again.

18 Q. You identified JetBlue's \$99 Y-up fare between Boston and
19 DCA as a problem for American?

20 A. Yes.

21 Q. You can put that document aside, Mr. Swartz.

22 I'd like to talk about a different route, the
23 Boston-Rochester route. So if you would please turn to
24 Plaintiffs' Exhibit 173.

25 MS. BALDWIN: Your Honor, this document has not yet

1 been admitted into evidence. I understand there's an
2 outstanding 805 objection. In conversations with defendants,
3 we've agreed the third-party statements in this document will
4 not be offered for the truth. And with that limitation in
5 mind, we move to admit it into evidence.

6 MS. MALTAS: No objection, Your Honor.

7 THE COURT: All right. Admitted with that
8 limitation.

9 (Plaintiffs' Exhibit 173 admitted into evidence.)

10 MS. BALDWIN: Thank you, Your Honor. And, again,
11 this document contains redactions.

12 BY MS. BALDWIN:

13 **Q.** So, again, Mr. Swartz, on this, I would caution you not
14 to read any of the information out loud that appears in the
15 black boxes on the screen.

16 **A.** I understand.

17 **Q.** The subject line of this e-mail thread, Mr. Swartz, is
18 "ROC-BOS"?

19 **A.** Correct.

20 **Q.** And that refers to the route between Boston and
21 Rochester, New York?

22 **A.** Yes, correct.

23 **Q.** Let's look at the first in time e-mail that you sent on
24 this thread. It's on the fourth page. This is an e-mail
25 that you sent to the EASE planning team and your boss,

1 Ms. Reichard? Is that right?

2 **A.** Just give me a sec. So that's the last page. Okay.

3 Yes.

4 **Q.** And the EASE planning team was American's eastern sales
5 division planning team?

6 **A.** That is correct.

7 **Q.** And this is an e-mail you sent on March 19, 2019?

8 **A.** Correct.

9 **Q.** And you wrote to your team and Ms. Reichard, "Please pull
10 a list of our top corporate customers flying to
11 Rochester-Boston. We are not doing well since JetBlue
12 entered the market." Is that right?

13 **A.** I did write that, yes.

14 **Q.** And JetBlue entered the Boston-Rochester market in
15 January of 2019?

16 **A.** I forget, honestly. I don't remember that.

17 **Q.** That's all right. Let's look at the bottom of the second
18 page and the top of the third. There's an e-mail that you
19 wrote on March 22, 2019, at 9:11 a.m. On the left, you'll
20 see the address block, but the substance of the e-mail is on
21 the third page. Do you see that?

22 **A.** What is the time on that? That's from me to the --

23 **Q.** To a number of folks at 9:11 a.m. on March 22, 2019?

24 **A.** Okay. I see now. All right. Yes.

25 **Q.** And it starts with "team"?

1 **A.** Yes.

2 **Q.** Sure. So if we can show the body of that e-mail. In the
3 first sentence of this e-mail, you wrote, "JetBlue started in
4 the Rochester-Boston market in Jan."

5 Is it safe to assume that "Jan" means January?

6 **A.** Yes, you are correct.

7 **Q.** So that would be approximately three months before the
8 time you wrote this e-mail?

9 **A.** Yes.

10 **Q.** In the second sentence, you write, "We have had a
11 couple" -- sorry. "We have had a couple of rough months
12 since JetBlue entered the market." Is that right?

13 **A.** Yes. I wrote that.

14 **Q.** So the impact of JetBlue starting to fly between Boston
15 and Rochester was already concerning you less than three
16 months after JetBlue started service?

17 **A.** Yes.

18 **Q.** You can put that document aside, Mr. Swartz.

19 And if you would, please, now turn to Plaintiffs'
20 Exhibit 195.

21 MS. BALDWIN: Your Honor, this document has been
22 admitted into evidence and does not contain redactions.

23 BY MS. BALDWIN:

24 **Q.** Are you there, Mr. Swartz?

25 **A.** I am.

1 **Q.** And this is a three-page e-mail thread from August of
2 2019; is that right?

3 **A.** Yes.

4 **Q.** Let's go to the first in time e-mail of this thread,
5 which is at the bottom of the second page. This is an e-mail
6 that you sent to Mr. Gilman and Ms. Reichard; is that right?

7 **A.** Yes. I sent to it to Steven Gilman and copied Ricki.

8 **Q.** And this is from August of 2019?

9 **A.** It is, correct.

10 **Q.** And in your e-mail, you asked Mr. Gilman and Ms. Reichard
11 whether they have any suggestions on reporting that shows the
12 importance of Boston to American's network?

13 **A.** I did, yes.

14 **Q.** Let's go to Mr. Gilman's response to your question.

15 And if you turn to about the third line down of
16 this e-mail, Mr. Gilman writes to you, "The fact is,
17 unfortunately, Boston does not perform as well from a
18 profitability perspective as other cities, largely due to the
19 fare destruction JetBlue have wrought."

20 Do you see that?

21 **A.** I do.

22 **Q.** So Mr. Gilman is informing you that Boston is not as
23 profitable as other cities are for American?

24 **A.** I don't know what Steven's -- why he responded like that.
25 My biggest concern, the reason I reached out to network

1 planning, was trying to make a case for more flights out of
2 Boston. It was about building a bigger network, not -- I
3 don't know why he responded about profitability.

4 **Q.** Do you have any reason to doubt the statement in
5 Mr. Milligan's e-mail that Boston at the time was not
6 performing as well, from a profitability perspective, as
7 other cities for American?

8 **A.** I can't say yes and no. I'm assuming, you know, that was
9 his opinion. Again, my -- the reason I initiated this e-mail
10 was about our network, not profitability.

11 **Q.** Okay. But you understood Mr. Gilman to be expressing
12 that Boston did not perform as well as other cities for
13 American from a profitability perspective, right?

14 **A.** That was his opinion.

15 **Q.** Okay. And at the time of his e-mail, JetBlue was the
16 largest airline in Boston?

17 **A.** Yes.

18 **Q.** And Mr. Gilman blames American's low profitability in
19 Boston on JetBlue's fare destruction, right?

20 **A.** That was Steven's opinion.

21 **Q.** And fare destruction would mean lower fares offered to
22 consumers?

23 **A.** I'm assuming that's what Steven meant.

24 **Q.** Let's go to your response to Mr. Gilman's e-mail.

25 **A.** And what time was that? At 2:12.

1 **Q.** At 2:12 p.m., yes, sir.

2 **A.** Okay. Sure.

3 **Q.** If you go to the second sentence of your e-mail, you
4 write, "There's a good chance we fall to tertiary status or
5 even fall out of contracts, losing to Delta and JetBlue." Do
6 you see that?

7 **A.** Yes.

8 **Q.** So here, you're worried that if American did not take
9 some sort of action in Boston, American may fall to third
10 place behind Delta and JetBlue?

11 **A.** My biggest concern, again, was about our lack of network
12 size in Boston. That's why I initiated this whole e-mail.
13 And, yes, any competition in Boston, I was very nervous
14 about, because we had been downsizing our network. So I was
15 trying to build a case to network planning to say we need
16 help, or we're going to quickly be pushed out.

17 So, again, our biggest competition, Delta, but you
18 know, B6 at the time, regional player, yes, I was worried
19 about as a salesperson. My job was to -- at this point in
20 Boston, was not only to win business, but to dig into the
21 trenches and try to hold what we had.

22 So I was very worried about losing business to
23 anyone out there that was a competitor. But mostly in this
24 case, it was Delta.

25 **Q.** Okay. So let's -- let's return to the text of your

1 e-mail. You're expressing there's a chance that American
2 could fall to third place in Boston, right?

3 **A.** Correct. Tertiary, yes.

4 **Q.** So fair to say that, in order to fall to third place,
5 American would have had to be number one or number two in
6 August of 2019?

7 **A.** It would all depend on what corporate customer you're
8 talking about. Every corporate customer we have, we're in a
9 position with them depending on the network fit. When we go
10 head to head with airlines, it's really American -- it's
11 against the other legacy players that are global footprint,
12 such as Delta or United.

13 **Q.** But in this e-mail, you called out both Delta and
14 JetBlue, right?

15 **A.** I did.

16 **Q.** Okay. You're also --

17 **A.** I think the reason I did that is because Steven had
18 mentioned JetBlue, so I was just responding. But, again, my
19 original e-mail was based on network, how do we dig in, how
20 do we expand? I need to build a case. And, again, it was
21 really against Delta and United.

22 **Q.** Okay. You're also expressing concern that if American
23 did not take action in Boston, American may fall out of
24 corporate contracts altogether?

25 **A.** There's always that possibility. I mean, I am a

1 salesperson. My job is to drive sales. So without lack of
2 network size, it becomes very hard for us to compete against
3 the other airlines.

4 **Q.** Okay. Thank you.

5 Let's now turn to the e-mail at the top of this
6 first page. This is an e-mail from Ms. Reichard at
7 11:11 a.m. Do you see that?

8 **A.** I do.

9 **Q.** And in responding to this thread, Ms. Reichard writes, if
10 you look at the bottom paragraph in the second sentence,
11 "Obviously, the yield per seg is less due to JetBlue
12 pricing," right? That's what she wrote?

13 **A.** I'm sorry. What -- this is Ricki to Steven and me, and
14 you're talking about the second -- okay. Obviously the
15 yield --

16 **Q.** So she writes, "Obviously, the yield per seg is less due
17 to JetBlue pricing," right?

18 **A.** Yes. That's what she wrote.

19 **Q.** And "yield per seg" is a measure of price? Is that what
20 you understand it to be?

21 **A.** Yes.

22 **Q.** And Ms. Reichard is stating that American's yield per
23 segment is lower because of JetBlue's pricing in Boston,
24 right?

25 **A.** That was her opinion.

1 **Q.** Both hers and Mr. Gilman's?

2 **A.** I -- in this particular sentence, it's Ricki's opinion.

3 **Q.** If we look at the e-mail earlier in the thread, that's
4 also the sentiment Mr. Gilman expressed to you?

5 **A.** Yes, it was.

6 **Q.** Okay. You can put that document aside, Mr. Swartz.

7 I'd like to now talk a bit about American's network
8 plans prior to entering the Northeast Alliance. So if you
9 would please turn to PX89 in your bind?

10 MS. BALDWIN: And, Your Honor, PX89 has been
11 admitted into evidence and does not contain redactions.

12 THE COURT: Okay. Thank you.

13 BY MS. BALDWIN:

14 **Q.** Mr. Swartz, the subject line of this e-mail is "2020
15 strategy: What do we need to do to fill plus 7 percent more
16 capacity?" Is that right?

17 **A.** Yes.

18 **Q.** And this e-mail thread was sent to you by a Mr. Jim
19 Carter?

20 **A.** Correct.

21 **Q.** And at the time of this e-mail, Mr. Carter was the
22 managing director for the eastern sales division in American?

23 **A.** Yes.

24 **Q.** And the date of this e-mail thread is October 2019?

25 **A.** That is correct.

1 Q. Prior to the NEA, right?

2 A. Yes.

3 Q. Okay. Let's go to the third page. Actually, let's start
4 with the second.

5 A. Okay.

6 Q. Might help give a little bit more context to what we're
7 looking at on page 3. So if you look here, this is an e-mail
8 describing the table on the third page, right?

9 A. Are you talking about the Brett Berman e-mail?

10 Q. Yes, sir.

11 A. Yes.

12 Q. And he writes that, "Below is a March 2020 versus
13 March 2019 domestic schedule compare by station for what is
14 currently loaded," right?

15 A. Yes.

16 Q. And so the table that appears on page 3 has March 2019
17 flying, which has already happened, right?

18 A. Yes.

19 Q. And it will compare March 2020 flights which are
20 currently loaded in American's sales system, right?

21 A. Correct.

22 Q. Okay. Let's turn to the table now, with that
23 understanding. And broadly speaking, this table shows data
24 related to a number of flights out of a series of airports
25 listed on the left, right?

1 **A.** Correct.

2 **Q.** It shows both the number of flights as well as the number
3 of seats?

4 **A.** Yes.

5 **Q.** Let's look at the two columns on the far right. The
6 headings read "diff" and "percent diff." Do you see those?

7 **A.** Yes.

8 **Q.** The diff column provides the difference between
9 American's March 2020 plan schedule and what it flew in
10 March 2019?

11 **A.** Correct.

12 **Q.** And in the total row, which is enlarged on your screen
13 for ease of viewing, it shows there are 6,900 additional
14 total flights for American in 2020 compared to 2019?

15 **A.** Yes.

16 **Q.** And more than 1.7 million additional seats, right?

17 **A.** Correct.

18 **Q.** And the column on the far right shows these differences
19 in terms of percentages, right?

20 **A.** Yes.

21 **Q.** Showing an increase in flights of 9.1 percent?

22 **A.** Yes.

23 **Q.** And an increase in seats of 8.6 percent?

24 **A.** That is correct.

25 **Q.** Let's go down to some of the specific airports that are

1 listed in this table. There's actually, thankfully, a
2 cluster of LaGuardia, Boston, and JFK all together. So if we
3 can display that.

4 Do you see those, Mr. Swartz?

5 **A.** I do.

6 **Q.** So starting with the row labeled "LaGuardia," you'll see
7 a 6.8 percent increase in flights between March 2019 and
8 March 2020?

9 **A.** Correct.

10 **Q.** And an 8.8 increase in seats?

11 **A.** Yes.

12 **Q.** And, again, this e-mail is from October 2019 prior to
13 American entering the Northeast Alliance?

14 **A.** Yes.

15 **Q.** Let's go to the next row down, which is labeled "Boston."
16 This shows a 13.8 percent increase in flights out of Boston?

17 **A.** Yes.

18 **Q.** And a 14 percent increase in seats?

19 **A.** Correct.

20 **Q.** And finally on the row labeled "JFK," we'll see a
21 25.9 percent increase in American's flights, right?

22 **A.** Yes.

23 **Q.** And a 13 percent increase in seats?

24 **A.** Correct.

25 **Q.** Let's go to the e-mail on the first page now. The e-mail

1 from Mr. Carter to you and a number of other folks. Do you
2 see that?

3 **A.** I do.

4 **Q.** And Mr. Carter's commentary about this table is that
5 Boston, JFK, and Raleigh-Durham are big winners for 2020; is
6 that right?

7 **A.** It is.

8 **Q.** You can set that document aside, Mr. Swartz.

9 I'd now like to talk about one of the routes that
10 American added service to prior to the Northeast Alliance.
11 So if you would -- actually, before you turn to a document,
12 Mr. Swartz, in December of 2019, did American announce it
13 would start offering service between Boston and Austin?

14 **A.** It did.

15 **Q.** And at the time of that announcement, did JetBlue offer
16 service between Boston and Austin?

17 **A.** I don't remember.

18 **Q.** All right. Well, with that in mind, let's turn to the
19 documents. If you would turn to PX193?

20 **A.** Okay.

21 MS. BALDWIN: And, Your Honor, this is in evidence,
22 and there are no redactions.

23 THE COURT: Thank you.

24 BY MS. BALDWIN:

25 **Q.** Let's start with the e-mail at the bottom of the first

1 page on December 11th at 11:15 a.m. This is an e-mail from
2 the JetBlue sales team; is that right? Is that what it
3 appears to be, I should say, based on the e-mail address?

4 **A.** December 11th at 11:24?

5 **Q.** At 11:15 a.m. --

6 **A.** Oh, I'm sorry.

7 **Q.** The bottom of the first page. No problem. It's zoomed
8 on the screen, if that's easier for you, Mr. Swartz.

9 **A.** Oh, yes. I see it. Thank you.

10 **Q.** And so this appears to be an e-mail from the JetBlue
11 sales team, right?

12 **A.** Yes.

13 **Q.** And the subject here is "More JetBlue Growth in Boston"?

14 **A.** Correct.

15 **Q.** And the JetBlue sales team sent this to a man with the
16 name Dale Peak?

17 **A.** Yes.

18 **Q.** And Mr. Peak was a global travel manager at Analog?

19 **A.** Yes.

20 **Q.** And if we look at the next e-mail, Mr. Peak forwards
21 JetBlue sales team's e-mail to both you and a Ms. Lynor
22 Carroll?

23 **A.** Correct.

24 **Q.** And Ms. Carroll, at the time, was a corporate account
25 sales manager for American?

1 **A.** Yes.

2 **Q.** In his e-mail to you-all, Mr. Peak writes, "Didn't take
3 them very long to add more Boston-Austin"; is that right?

4 **A.** Yes.

5 **Q.** And would December 11th be around the time that American
6 made the announcement that it was entering Boston-Austin?

7 **A.** Yes.

8 **Q.** So here, Mr. Peak is indicating JetBlue adding additional
9 flights between Boston and Austin, right?

10 **A.** I don't know what he meant, but I'm assuming that's what
11 it implies, yes.

12 **Q.** Okay. Let's go to the e-mail that you sent at
13 December 11th, 2019, at 2:19 p.m.

14 **A.** Okay.

15 **Q.** The very top of the page. Do you see that, Mr. Swartz?

16 **A.** I do.

17 **Q.** You forwarded Mr. Peak's e-mail on to a number of members
18 at American's -- at American's sales team; is that right?

19 **A.** Yes.

20 **Q.** And you wrote in this e-mail that JetBlue sounded
21 threatened by American's new flight on Boston-Austin?

22 **A.** I did write that.

23 **Q.** So you were acknowledging that JetBlue increased its
24 number of flights between Boston and Austin?

25 **A.** Yes.

1 **Q.** And that that was a response to American introducing
2 service on that route, right?

3 **A.** That's how I saw it.

4 **Q.** Okay. A few sentences later, on the second line of this
5 e-mail, you write, "The fight begins. This is definitely war
6 that we can win." Do you see that?

7 **A.** I do.

8 **Q.** And by "fight," you're referring to American fighting for
9 customers between Boston and Austin?

10 **A.** Yes, just like we do against all customers. My job is to
11 inspire my sales team. Every competitor out there, that's
12 what my job is, to defend, win business.

13 **Q.** And you saw at the time of this e-mail, you saw JetBlue
14 as a competitor?

15 **A.** Anyone that competes on a route against us that's not
16 part of our alliance is a competitor.

17 **Q.** But now JetBlue is a part of the alliance, right?

18 **A.** They are part of the alliance now, correct.

19 **Q.** So you no longer compete with JetBlue?

20 **A.** On that specific -- yes.

21 **Q.** Okay. You also say that American can win this war
22 against JetBlue, right?

23 **A.** I was trying to inspire my team as a great sales leader.

24 **Q.** At the very end of this e-mail, you write that "Boston is
25 back," right?

1 **A.** I need to inspire my team. I was excited about the one
2 or two flights that we received after many years of
3 downgrading Boston and eliminating lift. I was very excited
4 as a salesperson. It just gave us one or two additional
5 destinations to go out and sell against corporate customers.

6 **Q.** Well, Mr. Swartz, in PX89 that we just looked at, it
7 wasn't just one or two flights being added to Boston, right?

8 **A.** Destinations, not flights.

9 **Q.** We saw an increase in Boston of 13.8 percent?

10 **A.** That's frequency of flights, not new destinations. I was
11 excited about the one or two new flights that we announced
12 after -- my explanation is after years of losing flights and
13 only flying to our hubs, I was extremely excited to get some
14 new tools in the toolbox to fight against the competition,
15 mainly Delta.

16 **Q.** All right. You can put that document aside, Mr. Swartz.

17 I'd like to now talk about one quick issue after
18 the Northeast Alliance was entered by the parties. So if you
19 would please turn to Plaintiffs' Exhibit 333.

20 MS. BALDWIN: And, Your Honor, PX333 has not yet
21 been admitted into evidence. It has that same outstanding
22 805 objection, as I understand it, from defendants. And we
23 would move it into evidence with the stipulation we will not
24 be offering the third-party statements contained in the
25 document for the truth of the matter.

1 MS. MALTAS: No objection, Your Honor.

2 THE COURT: All right. Admitted with that
3 limitation.

4 (Plaintiffs' Exhibit 333 admitted into evidence.)

5 MS. BALDWIN: And this document does contain
6 redactions.

7 BY MS. BALDWIN:

8 Q. Mr. Swartz, I will once again caution you not to read the
9 redacted portions out loud?

10 A. I don't see that in mine --

11 Q. PX33 should be toward the end of your binder. It's
12 actually a handwritten tab.

13 A. Oh, I see it.

14 Q. I apologize for that.

15 A. No problem. Okay. Yes.

16 Q. Okay. So let's start with the e-mail at 12:00 p.m.,
17 which is at the very top of the first page. Here, Mr. Carter
18 is forwarding you some information about some of American's
19 corporate customers, right?

20 A. Yes. Sorry.

21 Q. And at the time, again, you were reporting to Mr. Carter?

22 A. I -- I still am, yes.

23 Q. Mr. Carter also forwarded this information about some
24 corporate customers to other members of American's corporate
25 sales team?

1 **A.** Yes, he did.

2 **Q.** And the time stamp is November 2021. Do you see that?

3 **A.** Yes, I do.

4 **Q.** This is after the NEA was being implemented? Is that
5 your understanding?

6 **A.** Yes.

7 **Q.** Let's turn to the first in time e-mail on the very last
8 page of this exhibit. And you'll see it starts on the fourth
9 page and spills on to the fifth.

10 **A.** Okay. Yes.

11 **Q.** This is an e-mail that a Mr. Colin Goss sent on
12 November 17, 2021?

13 **A.** Yes. I see that.

14 **Q.** And Mr. Goss had just spoken to travel managers for one
15 of American's large corporate customers?

16 **A.** Yes, it sounds like that.

17 **Q.** And this is more than a year and a half after the COVID
18 pandemic started in earnest in March of 2020, right?

19 **A.** Yes.

20 **Q.** And Mr. Goss reported that the corporate customer was
21 raising concerns about American not operating between Boston
22 and LGA?

23 **A.** Yes.

24 **Q.** And that's because, pursuant to the Northeast Alliance,
25 JetBlue is flying all of the Boston-LGA frequencies, right?

1 **A.** I'm assuming that's what it's about, yes.

2 **Q.** I want you to look at the name of the corporate customer
3 in this e-mail, but again, do not say it out loud. It should
4 be printed in your book.

5 **A.** Okay. Yes.

6 **Q.** Mr. Swartz, is it your understanding that this corporate
7 customer could afford a Zoom subscription?

8 MS. MALTAS: Objection.

9 THE WITNESS: I don't --

10 THE COURT: I think I can take judicial notice.

11 MS. BALDWIN: Thank you, Your Honor.

12 BY MS. BALDWIN:

13 **Q.** Mr. Goss is reporting that the customer is concerned
14 about American not flying Boston-LaGuardia, right?

15 **A.** Yes, that's what it says.

16 **Q.** Even in the height of the pandemic or months after the
17 pandemic is started, right?

18 **A.** Yes. I guess that's what it implies here.

19 **Q.** Let's go to Noel O'Connell's response at 6:37 p.m.

20 It's about halfway down the page.

21 THE COURT: What is AirPass?

22 THE WITNESS: AirPass is a corporate product or --
23 anyone can buy it. It's a prepaid pass.

24 THE COURT: And is it just prepaid for a certain
25 amount of flights, or is it sort of you prepay and you get --

1 THE WITNESS: You prepay a dollar amount, and
2 you're debited as you fly.

3 THE COURT: I see. So if you flew an expensive
4 flight, there would be a bigger debit and --

5 THE WITNESS: Correct.

6 THE COURT: I see. And it comes, I presume, with
7 some sort of corporate discounts, or what have you, depending
8 on the deal.

9 THE WITNESS: It comes with a bunch of premium
10 services and perks.

11 THE COURT: I see.

12 THE WITNESS: And it gives you the ultimate
13 flexibility and service, yeah.

14 THE COURT: Okay. Go ahead.

15 MS. BALDWIN: Thank you, Your Honor.

16 BY MS. BALDWIN:

17 **Q.** Mr. O'Connell at the time was the managing director of
18 sales for American?

19 **A.** I'm sorry; what did you say his title was?

20 **Q.** Managing director of sales for American.

21 **A.** Noel held a position. I'm not sure at the time what his
22 position was, but I don't think it was director of sales.

23 **Q.** Would he have been involved in corporate customers sales
24 and contracting?

25 **A.** He would be involved in the contracting side of the

1 business, yes.

2 **Q.** Okay. If you look at the second paragraph on the second
3 line, Mr. O'Connell writes, "Equally, the NEA has a lot to
4 fix on the customer and airport delivery seamless
5 proposition"; is that right?

6 **A.** That's what he wrote.

7 **Q.** So in response to complaints from multiple corporate
8 customers, Mr. O'Connell was expressing that the NEA was not
9 delivering on its promise of a seamless customer experience?

10 **A.** I guess that's what his opinion was in this e-mail.

11 **Q.** And this is approximately ten months after the parties
12 starting implementing the NEA; is that right?

13 **A.** Yes.

14 MS. BALDWIN: You can put that document aside.

15 At this time, Your Honor, plaintiffs pass the
16 witness.

17 THE COURT: Okay. Cross-examination?

18 Go ahead.

19 MS. MALTAS: Thank you, Your Honor.

20 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT AMERICAN AIRLINES**

21 BY MS. MALTAS:

22 **Q.** Good morning, Mr. Swartz.

23 Before we get started, just a couple of background
24 questions about your responsibilities. First of all, is your
25 team corporate sales in Boston responsible for determining

1 pricing?

2 **A.** No.

3 **Q.** Are you responsible for approving discounts?

4 **A.** No.

5 **Q.** Is your team responsible for determining schedules?

6 **A.** No.

7 **Q.** So plaintiffs asked you a number of questions about
8 competition in Boston, and we'll start there. So thinking
9 about the period when you've been responsible for corporate
10 sales in Boston, who have been American's primary competitors
11 for corporate sales accounts?

12 **A.** So when we contract with -- my team manages some of the
13 larger corporations in each of these regions. And I cover
14 New England, greater Washington, and Pennsylvania now. But
15 specifically in Boston, it's some of these largest
16 corporations. And we go head-to-head into these contracts.

17 Our biggest competitors are the legacy airlines,
18 like United and Delta, because most of these corporations
19 have global footprints. They might be headquartered here in
20 Boston and they might have a lot of travelers out of Boston,
21 but they also have offices around the world. So when we go
22 head-to-head in corporate accounts, it's the -- it's the
23 Deltas of the world, the Uniteds that we're up against,
24 fighting for primary and secondary positions because we have
25 the -- or they have, as well as us, the international and

1 domestic routes that these -- that can service their business
2 customers.

3 **Q.** So plaintiffs focused a lot on JetBlue. Do you consider
4 JetBlue to be a competitor for corporate accounts?

5 **A.** Again, anyone that competes --

6 THE COURT: Now, or back in 2019?

7 MS. MALTAS: Back in 2019.

8 THE COURT: Okay.

9 THE WITNESS: I consider, again, on the corporate
10 routes, JetBlue's a great regional airline. They fly
11 domestically here in Boston. They're well known. But,
12 again, when we go up against these big corporate companies
13 and fight for a travel position in there, it's the Deltas and
14 Uniteds of the world that we're up against. I mean, if
15 you're comparing apples to apples, that's who we're going
16 after.

17 BY MS. MALTAS:

18 **Q.** As between Delta and United, who do you consider to be
19 your largest competitor in Boston?

20 **A.** By far, it's Delta.

21 **Q.** And in your experience, what makes Delta a formidable
22 competitor for corporate customers, specifically in Boston?

23 **A.** They just have a bigger network, both internationally and
24 domestic. And, again, I've been with American for 13 years.
25 Since I started at American, Boston became a less competitive

1 hub for us because we're only flying into our hubs. And we
2 had very few point-to-point destinations outside of those
3 hubs, compared to a Delta, that had an extensive network,
4 both internationally and domestically. So it was very hard
5 to compete against them for local Boston accounts that were
6 headquartered here.

7 **Q.** And during this period that you mentioned American had
8 few point-to-points and was mainly flying to the hubs, what
9 was Delta doing?

10 **A.** You know, they had long since put a stake in the ground
11 here in Boston and were significantly increasing their
12 network. It was well publicized. They put a tremendous
13 amount of press out there about it, and they backed it up
14 with a lot of new additional international and domestic
15 flights.

16 **Q.** And how was American fairing in this competition against
17 a growing Delta?

18 **A.** We were, again, like -- my job became more of not trying
19 to win new business and grow it; it became about how do we
20 put a -- jump into the trenches and keep from losing
21 business.

22 **Q.** There were a few questions about how contracting worked,
23 and particularly there was a mention to a tertiary position
24 in the contract. Can you just explain the concept of
25 positions on the contract?

1 **A.** Sure. So when we compete in a contract account,
2 typically these corporations will have a couple primary
3 carriers. They'll have some secondary, and then tertiary
4 would be kind of the regional, smaller, that can fill some of
5 the niche point-to-point destinations that might be a local
6 need or, you know, an ability to help fill out their network
7 for their corporate travelers.

8 **Q.** Could you please turn in your binder, and we'll go ahead
9 and introduce DX47, which should already be in evidence.

10 **A.** Yes.

11 **Q.** And, Mr. Swartz, we already looked earlier at a
12 competitive change report. Generally, what are competitive
13 change reports?

14 **A.** It's internally our team puts out just some latest
15 updates, not only what we're doing, adding, decreasing,
16 adding frequency, but also the competition. Just kind of a
17 consolidated update. I figure it's biweekly.

18 **Q.** And I think this might actually be a different offshoot
19 of the same competitive change report that plaintiffs already
20 showed you. Could we look at industry -- under the industry,
21 highlights, "DL published service on three new Boston routes
22 and announced a fourth." Do you see that?

23 **A.** I do.

24 **Q.** And let's go ahead and look at your response to this
25 e-mail.

1 **A.** Okay.

2 **Q.** You respond, "Team, no surprises with recent
3 announcements. DL adding flights in Boston. We need to stay
4 close to our customers." What did you mean by that?

5 **A.** Again, you know, as a sales team leader, I was, you know,
6 another example of Delta adding frequency in the market just
7 becoming harder and harder to compete against. And the one
8 thing that really separated us, I felt, in the marketplace
9 was our customer service and support to our traveler
10 managers. And I was trying to emphasize, hey, stay close to
11 your customers. Anything we can provide in value with
12 support might separate us & help keep us in the game versus
13 it's hard to compete when a competitor just continues to grow
14 and grow.

15 **Q.** And were you concerned at all about this growth by Delta?

16 **A.** I was. As a sales leader, a manager, it just becomes
17 harder and harder to compete if the network is much bigger or
18 greater than what you're offering customers.

19 **Q.** Let's take a look now in your binder at DX21, which
20 should also be in evidence. And, Mr. Swartz, I would like to
21 draw your attention to your e-mail on the first page, which
22 is in the middle.

23 **A.** Okay.

24 **Q.** And what's the date of this e-mail?

25 **A.** It is April 22, 2019.

1 **Q.** And in here in this part that's highlighted, you write,
2 "In short term, we're in for a dog fight in transatlantic,
3 the DL/VS. Our smaller footprint in DOM market will make it
4 a harder sell and to keep our current position in BOS-LHR
5 market." So just to start, what do you mean by "DL/VS"?

6 **A.** That is Delta/Virgin.

7 **Q.** Okay. And what is "DOM"?

8 **A.** Domestic market, or domestic flights.

9 **Q.** And what did you mean with your statement that the
10 smaller footprint in the domestic market will make it a
11 harder sale to compete against Delta and Virgin?

12 **A.** So again, Delta-Virgin is an alliance similar to what we
13 have with British Airways and American. But with Delta
14 building up and having a significant advantage with us
15 domestically out of Boston, you know, we had a strong
16 competitive offering with American and British Airways, but
17 if we continue to fall behind domestically, it just made the
18 Delta proposition to corporate customers so much greater,
19 because they could serve them well both transatlantic, as
20 well as domestic.

21 **Q.** And the paragraph continues, "Long-term, expect our
22 overall market share to slip in Boston over the next few
23 years if we keep same domestic footprint and BOS-LHR becomes
24 more competitive. We'll be fighting to keep AA at a
25 secondary or even tertiary position. The reality of Boston."

1 And what did you mean by this?

2 **A.** Mitch Goodman is network planning. I was pleading
3 regularly to network planning to help us in the Boston market
4 to create more point-to-point destinations, beef up our
5 network. We were becoming uncompetitive compared to Delta,
6 who, again, is our major competitor in this marketplace when
7 going against corporate customers.

8 **Q.** And, Mr. Swartz, we've heard throughout this trial that
9 American is the largest airline in the world and has a
10 massive global network. Why can't you just sell to Boston
11 corporates with that global network?

12 **A.** I mean, it is a fact we are the largest network out
13 there; but unfortunately, specifically in Boston, we weren't.
14 And it just becomes harder when we go against these big --
15 big -- going -- you know, trying to win business against
16 corporate accounts, specifically those headquartered here in
17 Boston, that have a lot -- a lot of corporate travelers that
18 are based here in Boston.

19 It's about the network. Business travelers want to
20 fly direct. They don't want to connect. And Delta, when you
21 compare apples to apples, had the same premium product, had
22 the same clubs we do in the airport, but they had the direct
23 flights. And it just was becoming harder and harder for my
24 team to compete without the direct, or without the network.

25 **Q.** So plaintiffs showed you a number of e-mails about

1 JetBlue and I just want to be clear. Do you have any
2 customers where you are only concerned about competition from
3 JetBlue?

4 **A.** No.

5 **Q.** Plaintiffs also asked you about the Boston to Rochester
6 route. Just generally, how important is the Boston to
7 Rochester route in terms of your sales to corporate
8 customers?

9 **A.** Hey, we -- in Boston, we -- we wanted every piece of
10 business we could. I mean, that's my job as a salesman. But
11 if I had to pick and choose, Rochester-Boston would probably
12 be very low on the totem pole as far as size and scope. I
13 mean, it's a -- we fly there. We flew it on a very small
14 regional. We were looking for much bigger routes.

15 **Q.** So plaintiffs also asked you a few questions about the
16 point-to-point routes that American announced in Boston prior
17 to COVID. And I -- you described this pretty eloquently, I
18 think, but were you excited about American's decision to add
19 those routes from Boston?

20 **A.** I was excited about any new route that came into Boston,
21 and I tried to, you know, relay it to the team. It was a
22 sign that, you know, it wasn't a 20, 30 flights I wanted, but
23 any new flight was just another flight that we could go out
24 and sell. And so -- and I don't know if network planning
25 just was throwing me a flight to appease me for my multiple

1 reachouts to network planning for new flights.

2 **Q.** And did you really think at this point, when American
3 added those few point-to-point flights, that Boston was back?

4 MS. BALDWIN: Objection, Your Honor. Leading.

5 THE COURT: Overruled.

6 THE WITNESS: So -- I'm sorry?

7 THE COURT: You can answer the question.

8 THE WITNESS: Can you repeat the question again?

9 BY MS. MALTAS:

10 **Q.** Sure. Did you really feel that when you received these
11 few point-to-point routes in Boston, that Boston was back?

12 **A.** I did not. I thought we were happy to get those two and
13 make them successful, and that was that.

14 **Q.** In your view, were these new point-to-point routes
15 sufficient to allow American to compete with Delta's network
16 in Boston?

17 **A.** Not at all.

18 **Q.** And was Delta still growing, too, during this time?

19 **A.** Without a doubt.

20 **Q.** Were you aware at this time of any concrete plans to
21 expand in Boston beyond these few point-to-point routes?

22 **A.** No.

23 **Q.** All right. Let's take a look at DX76, please.

24 **A.** Okay.

25 **Q.** Let's give it a second to pull up.

1 **A.** Okay.

2 **Q.** And just generally, what is this document?

3 **A.** Is this the one that says "Austin Intel"?

4 **Q.** This is called "Austin Intel," that's right.

5 **A.** Correct. This was an e-mail from Esther Maldonado, who
6 was a managing director covering the Southwest for American.

7 **Q.** And what is Mrs. Maldonado reporting to you?

8 **A.** She said that we learned this morning Delta has been in
9 contact with corporate customers in Austin and requesting
10 letters of support to start SJC, BOS, SAN, NYC, and RDU,
11 Portland and LA Basin.

12 **Q.** And let's take a look at your response, please, to
13 Mrs. Maldonado.

14 **A.** Yeah. I reply, "Thank you for the market intelligence.
15 Delta is getting very aggressive with new domestic growth."

16 **Q.** Were you surprised that Delta was also considering
17 announcing a new Boston to Austin route?

18 **A.** No, not at all. I felt like they were going to match us.
19 Anything we announced, they were going to match the same.

20 **Q.** And what did you mean by Delta is getting very aggressive
21 with new domestic growth?

22 **A.** They continued to grow their footprint in Boston and from
23 everything I saw, published they had -- they wanted to make
24 it a major hub.

25 **Q.** So we've been talking about competition between American

1 and its competitors before the NEA. So let's focus on the
2 NEA now.

3 In your experience, how has the NEA affected
4 American's ability to compete for corporate customers in
5 Boston, if at all?

6 **A.** I think it's helped tremendously. It just gives more
7 direct-direct, point-to-point destinations, bigger network.
8 It allowed us to compete or at least offer some alternatives
9 and a bigger network when we go out to fight for a position
10 with our corporate customers. It's made a big difference.

11 **Q.** With regard to that bigger network, has American added
12 more flights out of Boston to more destinations because of
13 the NEA?

14 **A.** Yes.

15 **Q.** And how, if at all, has that helped you compete in
16 Boston?

17 **A.** The network is key. Network is key. When people want to
18 fly these days, people want to fly direct. And it's even
19 more so with the corporate business traveler. They don't
20 have time to connect. They much prefer to fly direct. So it
21 just gives more direct destinations that we can offer with
22 our combined Northeast Alliance.

23 **Q.** And how did these new routes that have been announced
24 since the NEA compare to the handful of point-to-points that
25 were announced in 2019?

1 **A.** Significant difference.

2 **Q.** Has the NEA had any effect on American's transcontinental
3 product out of Boston?

4 **A.** No.

5 **Q.** The trans-con?

6 **A.** The trans-con, correct -- oh the trans-con? Yes. The
7 trans-con -- so trans-con is basically considered Boston to
8 LAX. And so my personal opinion, it has been a superior
9 product to our competitors out there, so it's been a real
10 boost. So now our corporate customers can either fly on our
11 321T, which is an incredible aircraft, three cabin; or they
12 have the alternative to fly on JetBlue's Mint product. So I
13 feel like it's a real competitive advantage for us, compared
14 to the competition.

15 **Q.** Do you include the NEA in your messaging to customers?

16 **A.** I'm sorry?

17 **Q.** Do you include the NEA in your messaging to customers?

18 **A.** Yes. Of course.

19 **Q.** And what's your sales pitch to corporate customers about
20 the NEA?

21 **A.** It's -- we can offer your corporate customers a lot more
22 point-to-point destinations whether you fly on us or
23 American. It's significantly -- we can add to our network
24 out of Boston. We can get you where you need to be and
25 direct.

1 **Q.** Did you conduct any outreach to corporate customers as
2 the NEA was announced and implemented?

3 **A.** Sure. We were excited to reach out to customers.

4 **Q.** And why is it important for American to reach out to
5 corporate customers about the NEA?

6 **A.** It gave them a whole -- it gave us a much bigger network
7 that we could really promote to corporate customers,
8 something that we hadn't seen for years, and we were really
9 excited, especially everyone on the sales team.

10 **Q.** Let's take a look now at DX49, which is in your binder
11 and will be up on the screen.

12 MS. MALTAS: Oh, actually, don't put it up on the
13 screen. This has an 805 objection. But I understand that,
14 pursuant to our prior discussions, that this can be admitted
15 without the truth of the matter asserted for the customer
16 comments.

17 MS. BALDWIN: Correct, Your Honor, as long as the
18 third-party statements are not offered for the truth, that
19 resolves our --

20 THE COURT: Admitted with that limitation.
21 (Defendants' Exhibit No. 49 admitted into
22 evidence.)

23 THE COURT: What's the exhibit number again?

24 MS. MALTAS: DX49.
25

1 BY MS. MALTAS:

2 Q. And, Mr. Swartz, this is one where the customer name has
3 been redacted. So, again, I'll caution you not to reveal
4 that name.

5 A. Uh-huh.

6 Q. So without referring at all to the customer name in
7 talking about this e-mail, what's the date of this e-mail?

8 A. 8/24/21.

9 Q. Okay. And this is an e-mail we'll focus from Lynor
10 Carroll. Who is Ms. Carroll?

11 A. She has a -- she is an account manager that manages some
12 corporate accounts on my team based out of Boston.

13 Q. And if we can focus our attention on the fourth bullet,
14 please, from Ms. Carroll.

15 A. Yes.

16 Q. Again, not saying the customer name, but the customer
17 "truly values our partnership. The overall offering was
18 enhanced by adding all global POS and most especially with
19 our JetBlue partnership. AA-JB/B6 now covers all of our
20 travel needs. It's the perfect fit."

21 What did you understand Ms. Carroll to mean by
22 that?

23 A. That this particular corporate customer was very excited
24 that we had a larger network out of Boston to meet all their
25 corporate traveler needs.

1 **Q.** And did American win this opportunity with this corporate
2 customer?

3 **A.** We did.

4 **Q.** In your opinion, did the NEA help American win this
5 opportunity?

6 **A.** Yes, of course.

7 **Q.** Plaintiffs' counsel also --

8 MS. MALTAS: You can take this down.

9 BY MS. MALTAS:

10 **Q.** Plaintiffs' counsel also asked you about seamlessness.
11 And as someone who is responsible for selling the NEA to
12 corporate customers, is seamlessness a priority for you?

13 **A.** Yes.

14 **Q.** And what are you doing in terms of your selling and your
15 communications regarding seamlessness?

16 **A.** So, to be perfectly honest, it is -- seamlessness
17 where -- it's not 100 percent perfect, but with the size of
18 this alliance, I can tell you, 100 percent, we are dedicated
19 to making it seamless. It is night and day from when we
20 first rolled this out, and we're spending a lot of time,
21 energy, and money on it, but it takes time.

22 Systems have to be combined. You're talking about
23 two different airlines. I'm hearing from the corporate
24 customers that they feel it's getting better every day, and
25 we have made substantial progress, and eventually we will

1 make it seamless.

2 **Q.** Finally, in your experience, have you seen any reaction
3 from Delta here in Boston from the NEA?

4 **A.** I --

5 MS. BALDWIN: Objection, Your Honor. Foundation.

6 THE COURT: Overruled.

7 THE WITNESS: I think they continue to add new
8 flights. You know, they continue to -- I think they've
9 become more aggressive since the Northeast Alliance and see
10 us as a true competitor now, where I don't believe they
11 thought that in the past.

12 BY MS. MALTAS:

13 **Q.** And let's take a look at DX77, which I believe has
14 already been introduced into evidence. And this one, I
15 apologize, is very hard to read, just because of how it was
16 produced. So if we could just take a look at this e-mail
17 that's from Martin Schneider to you, Mr. Swartz.

18 **A.** Let me get out my magnifying glass.

19 **Q.** Yes. Sorry.

20 **A.** I see it on the screen better here. Okay. Yes.

21 **Q.** All right. And could we actually -- if you can just flip
22 through that and just tell us what Mr. Schneider had sent to
23 you?

24 **A.** So he's talking about flights that Delta had announced
25 with direct flights out of Boston to Tel Aviv and Athens,

1 Greece.

2 **Q.** And turning to your response, you say, "I believe it's a
3 direct response to our NEA announcement. It's proof that the
4 NEA is creating more choices and options for customers." And
5 what were you referring to?

6 **A.** So I was referring to -- we are offer -- had announced
7 and already put into the market prior to that direct flights
8 out of JFK to Tel Aviv and Athens. And the premise of the
9 Northeast Alliance was to help funnel traffic both from
10 American and JetBlue into JFK to help support our two new
11 flights.

12 So I saw that as Delta, again, seeing that and
13 one-upping us in Boston and implementing direct flights out
14 of Boston to those two new destinations. I didn't -- it was
15 my personal opinion that those didn't come out of the blue,
16 and that was a direct response to our JFK and more
17 specifically our Northeast Alliance on how JetBlue would
18 funnel passengers into JFK to support our international
19 flights to those two destinations.

20 MS. MALTAS: Thank you so much, Mr. Swartz.

21 I pass the witness.

22 THE COURT: Any redirect?

23 MS. BALDWIN: Yes, Your Honor.

24

25

REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS

BY MS. BALDWIN:

Q. Mr. Swartz, I want to start with the discussion you had with Ms. Maltas about corporate customers. During your tenure at American, are you aware of American having any customers whose only other corporate contract was with JetBlue?

A. I would say -- I couldn't name the customer, and if there was, it would be a fraction of a percent.

Q. All right. Well, let's turn to PX0194?

MS. BALDWIN: Your Honor, this has been admitted into evidence and contains redactions.

THE COURT: All right. What's the number again?

MS. BALDWIN: 194.

THE COURT: 194. Thank you.

MS. BALDWIN: Yes, Your Honor.

BY MS. BALDWIN:

Q. And this is an e-mail, if you look at the very top, from a Ms. Brenda Whalen to you and Ms. Reichard, right?

A. Yes.

Q. And you're discussing shuttle markets regarding a corporate customer whose name has been redacted, right?

A. Correct.

Q. And in the very first line of her e-mail, Ms. Whalen writes that "It's American and JetBlue today," right?

1 **A.** Yes.

2 **Q.** And, in fact, if you go to Ms. Reichard's prior e-mail,
3 Ms. Reichard writes that if the manager for this corporate
4 customer -- sorry -- with the redactions, it's a bit
5 difficult. How -- whether it's just American and JetBlue
6 will compare to how -- to what would happen if Delta was
7 added back into that corporate customer's contract, right?

8 **A.** Yes.

9 **Q.** Okay. Let's now turn to PX197.

10 MS. BALDWIN: And, Your Honor, this is in evidence
11 and contains redaction.

12 THE COURT: Okay.

13 BY MS. BALDWIN:

14 **Q.** And here you're talking with your colleagues at American
15 about how to prevent that same corporate customer from adding
16 Delta back into its corporate contract, right?

17 **A.** Yes.

18 **Q.** And this is a pretty large Boston-based corporate
19 customer, right?

20 **A.** There -- they're a corporate customer.

21 **Q.** Okay. Let's go to the e-mail from you on the bottom of
22 the first page at 6:44 a.m. Do you see that?

23 **A.** The bottom of the first page? Yes, I do.

24 **Q.** And the second sentence of your e-mail, you write that
25 JetBlue is going to 230 daily flights in the next 12 months,

1 and Delta was announcing Boston as its new hub, right?

2 **A.** Correct.

3 **Q.** And you call this "unfortunate effects of the new Boston
4 market," right?

5 **A.** Yes. That's what I said.

6 **Q.** So fair to say that you are concerned about JetBlue
7 getting share of your corporate customer contracts prior to
8 the NEA?

9 **A.** Again, any competitor is -- anyone that's flying routes
10 that we're flying against and competing in a contract is a
11 competitor.

12 **Q.** And following the industry of the NEA, JetBlue will no
13 longer be a competitor, right?

14 **A.** No, that -- the Northeast Alliance is where we work
15 together.

16 **Q.** Right. So for Boston-based markets, JetBlue will no
17 longer compete for corporate customers, right?

18 **A.** We will be -- yes. It's an alliance.

19 **Q.** So no longer competing, right?

20 **A.** That is not correct. We do compete internationally and
21 as well as with corporate customers that might be based in
22 Boston that fly outside of the Northeast Alliance. So it's
23 really unique that we work together on -- with this alliance
24 with -- and then outside the alliance, we're archenemies.

25 **Q.** Okay. I'd like to turn back to DX21 that Ms. Maltas

1 asked you about earlier.

2 MS. BALDWIN: Do we have that? 21?

3 BY MS. BALDWIN:

4 **Q.** Do you recall speaking about this e-mail, Mr. Swartz?

5 **A.** I'm sorry. You're going to have to give me a minute.
6 It's PX21?

7 THE COURT: DX.

8 BY MS. BALDWIN:

9 **Q.** DX21.

10 **A.** DX.

11 **Q.** D for Delta, maybe?

12 **A.** I need to switch my binder.

13 **Q.** I apologize.

14 **A.** That's all right.

15 DX21. I have it. Thank you.

16 **Q.** Let's go to the very first in time e-mail in this thread.
17 You sent it to Mr. Mitchell Goodman and cc'd Ms. Reichard at
18 6:47 a.m.?

19 **A.** Yes. I see that.

20 **Q.** And if you go to the second line, you're talking about
21 competition between Boston and London-Heathrow, right?

22 **A.** Correct.

23 **Q.** And you say that Boston-London Heathrow has become highly
24 competitive with Delta and Virgin and especially now with
25 JetBlue's recent announcement of flying Boston to London in

1 2020/2021, right?

2 **A.** That's what I wrote.

3 **Q.** Okay.

4 **A.** And that transatlantic piece, Boston to London, is not in
5 the Northeast Alliance.

6 **Q.** Well, it is for the American side, right?

7 **A.** Yes.

8 **Q.** Okay. Let's go to the first page, this document.

9 There's an e-mail that you sent at 8:27 a.m. in the middle of
10 the page to Mr. Goodman, Ms. Reichard, and it looks like you
11 also cc'd yourself. Do you see that?

12 **A.** 8:27?

13 **Q.** Also displayed on the screen if that's easier.

14 **A.** Yes, I see that. It's easier for me to read it out of
15 the binder. Sorry.

16 **Q.** That's totally fine.

17 The second sentence of your e-mail, you write that
18 transatlantic competition was growing and was expected to get
19 worst -- I imagine you meant worse there -- with JetBlue
20 coming into the market in 2020/2021, right?

21 **A.** Yes.

22 **Q.** And you added that Delta, Virgin, and JetBlue's overall
23 footprint was growing both domestically and internationally
24 in Boston, right?

25 **A.** Yes.

1 **Q.** And then you added that the American-British
2 Airways-Boston international stronghold is going away, and
3 that that stronghold had kept American in a dominant Boston
4 position, right?

5 **A.** Where are you reading that? Sorry. Okay. I see that,
6 yes.

7 **Q.** Okay. And this is April of 2019?

8 **A.** It is.

9 **Q.** Mr. Swartz, only if you know, is your alliance with the
10 Atlantic joint business -- do you know what percentage that
11 encompasses of the London market, Boston-London market?

12 **A.** I don't know.

13 **Q.** Okay. And so here, in addition to being concerned about
14 JetBlue, you're also ringing the alarm of it about Delta's
15 presence between Boston and Heathrow; is that right?

16 **A.** That is correct.

17 **Q.** And Delta did this without any sort of domestic alliance,
18 right?

19 **A.** Yes. They had a bigger footprint all along and
20 continuing to grow in Boston.

21 **Q.** And that growth was organic?

22 **A.** Yes, as well as I think they announced some additional
23 flights with some partners out of Boston, as well.

24 **Q.** International partners, right, Mr. Swartz?

25 **A.** That is correct.

1 **Q.** So here it's not that American couldn't compete; it's
2 just that American would need to invest in organic growth
3 like Delta did, right?

4 MS. MALTAS: Objection. Lacks foundation.

5 THE COURT: Overruled.

6 THE WITNESS: Could you repeat the question?

7 Sorry.

8 BY MS. BALDWIN:

9 **Q.** Sure. So what we're seeing here is that it's not that
10 American is unable to compete, it's just that competing in
11 Boston would mean American needs to invest in organic growth
12 in Boston, right? Like Delta did?

13 **A.** We would have to add new flights, yes, I guess.

14 **Q.** And American could do that organically on its own, right?

15 MS. MALTAS: Objection. Lacks foundation.

16 THE COURT: Sustained.

17 BY MS. BALDWIN:

18 **Q.** We saw in fall of 2019 that American had plans in Boston
19 to grow?

20 **A.** Are you referring to the Austin flight?

21 **Q.** I'm referring to PX89, which showed a large increase, I
22 believe 13 to 14 percent of the number of flights out of
23 Boston. Do you recall that?

24 **A.** So you're referring to flights, not point-to-point
25 destinations.

1 Q. So let's turn back to PX89.

2 A. Okay.

3 Q. Once again, this is a year-over-year growth plan,
4 comparing what American flew in March of 2019 to what it had
5 loaded in the scheduling system for March of 2020, right?

6 A. Yes.

7 Q. And it's prior to entry of the Northeast Alliance?

8 A. Yes.

9 Q. And if you look at the Boston row, you'll see that
10 there's an increase in flights of 13.8 percent, right?

11 A. Oh, the Boston row. Yes.

12 Q. And an increase of 14 percent in the number of seats
13 flying out of Boston for American, right?

14 A. Correct. So your -- more frequency, more seats, yes.

15 MS. BALDWIN: Okay. No further questions,
16 Your Honor.

17 THE WITNESS: And I think that -- sorry.

18 THE COURT: Go ahead.

19 MS. MALTAS: Just briefly, Your Honor.

20 **RECROSS-EXAMINATION BY COUNSEL FOR DEFENDANT AMERICAN AIRLINES**

21 BY MS. MALTAS:

22 Q. Mr. Swartz, why do you draw a distinction in terms of
23 your sales between flights and destinations?

24 A. So from a salesperson's point of view in our team,
25 point-to-point destination is much more critical. That is

1 another, you know, destination in our toolbox that we can
2 offer corporate customers.

3 Adding additional flights is great. And I think,
4 you know, based on what we just talked about, about the
5 LaGuardia, I mean, we didn't have a lot of flights, so it
6 doesn't take that many more to make a bigger mark in the
7 percentage.

8 So frequency is great, but at the end of the day,
9 what the customer wants, and our corporate traveler, is the
10 ability to fly direct. That's the most critical thing for me
11 as a salesperson and my team going out to these corporate
12 customers.

13 MS. MALTAS: Thank you so much.

14 MS. BALDWIN: Briefly?

15 THE COURT: Yep. Go ahead.

16 **FURTHER REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS**

17 BY MS. BALDWIN:

18 **Q.** Mr. Swartz, earlier --

19 THE COURT: Whoa, wait. Ordinarily, it's just one
20 two, one, two. So I'm just --

21 MS. BALDWIN: That's okay, then.

22 THE COURT: Okay. You're done, right?

23 MS. MALTAS: Yes, Your Honor.

24 THE COURT: All right. Thank you very much.
25 You're excused.

1 THE WITNESS: All right. Thank you.

2 THE COURT: Have a good day.

3 Next?

4 Only because, otherwise, Ms. Baldwin, I think we
5 would be here a long time.

6 MS. BALDWIN: No problem. Understood, Your Honor.

7 THE COURT: If there's something, like -- I will
8 say to all of you, you know, if there's anything unusual on a
9 particular witness, one unusual circumstance, I might think
10 about it. But, otherwise, it's just the two rounds. But
11 kudos for trying.

12 MS. BALDWIN: You miss 100 percent of the shots you
13 don't take, right?

14 MR. JONES: Your Honor, plaintiffs next call David
15 Fintzen of JetBlue.

16 THE COURT: All right.

17 MR. JONES: And my colleague, Mr. Congdon, will be
18 conducting the examination for the Department of Justice.

19 THE COURT: Mr. Congdon?

20 MR. CONGDON: Congdon, C-o-n-g-d-o-n.

21 THE COURT: I remember you. You were the one
22 worried Mr. Jones was going to claw back something you said.

23 MR. CONGDON: Hopeful. Hopefully, he would not
24 have to.

25 THE DEPUTY CLERK: Mr. Fintzen, if you could please

1 stand and raise your right hand.

2 (Witness duly sworn.)

3 THE DEPUTY CLERK: And can you please state your
4 name for the record.

5 THE WITNESS: David Fintzen, F-i-n-t-z-e-n.

6 THE COURT: All right. Go ahead.

7 MR. CONGDON: Thank you, Your Honor.

8 **DAVID FINTZEN**

9 having been duly sworn, testified as follows:

10 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS**

11 BY MR. CONGDON:

12 **Q.** Good morning, Mr. Fintzen.

13 **A.** Good morning.

14 **Q.** Jack Congdon on behalf of the United States for
15 plaintiffs.

16 Mr. Fintzen, you should have a binder in front of
17 you, which we will refer to during your examination, and I'll
18 let you know where and when to turn to that. Okay?

19 Mr. Fintzen, you're currently the vice president
20 for the Northeast Alliance at JetBlue; is that right?

21 **A.** That's correct.

22 **Q.** And when did you become vice president of the Northeast
23 Alliance at JetBlue?

24 **A.** I became vice president of the Northeast Alliance in
25 April of 2021.

1 **Q.** Okay. And prior to this position, you were the vice
2 president for investor relations at JetBlue; is that right?

3 **A.** Yeah, that's correct.

4 **Q.** Can you describe your role as -- your responsibilities as
5 vice president of investor relations, please?

6 **A.** As vice president of investor relations, I oversaw the
7 sort of day-to-day interaction that we had, that JetBlue had
8 as a public -- publicly traded company with the investment
9 community -- so our investors, our owners, potential
10 investors, equity research analysts, sort of the whole
11 community at large.

12 **Q.** And you worked in investor relations from the time you
13 joined JetBlue in 2016 until April of 2021; is that right?

14 **A.** That's correct.

15 **Q.** And prior to joining JetBlue, you worked as an analyst at
16 Barclays; is that right?

17 **A.** That's correct.

18 **Q.** And in that role, you covered the airline industry,
19 correct?

20 **A.** Correct. That was an equity research analyst covering
21 primarily the US airline industry.

22 **Q.** Thank you.

23 Mr. Fintzen, you were involved in JetBlue's
24 evaluation of the Northeast Alliance, correct?

25 **A.** That's correct.

1 Q. And just in terms of timing, that began while you were
2 still vice president of investor relations; is that right?

3 A. Yeah, that began around April of 2020, when a group of us
4 were kind of brought out of our day-to-day role and brought
5 to work on "Project Connie," as it was called.

6 Q. Okay. And are you referring to the creation of the clean
7 team there, Mr. Fintzen?

8 A. Yeah, the clean team that would evaluate what became
9 known as the Northeast Alliance.

10 Q. And you led that clean team for JetBlue, correct?

11 A. That's correct.

12 Q. And in that role, you sometimes referred to it as the
13 "working lead for the clean team"; is that right?

14 A. I think in sort of some of the governance setup, that
15 might have been the terminology.

16 Q. And you directed the work of other clean team members,
17 correct?

18 A. Correct.

19 Q. Now, none of the members of the clean team, including
20 yourself, were part of JetBlue's network planning department,
21 correct?

22 A. No. We were -- we were -- we came from other parts of
23 the organization.

24 Q. And that was part of the purpose, right, to keep the
25 network planners separate because you would be interacting

1 with American, correct?

2 **A.** Correct. We would -- we brought the team, including
3 myself, of five individuals. We could be dedicated, really,
4 to the work of Project Connie, separated from our -- sort of
5 brought out of our day-to-day responsibilities, and then
6 brought sort of a mix of commercial and strategy backgrounds
7 to do that work -- but we could work with proprietary
8 information when necessary with American's clean team.

9 **Q.** And as working lead for the clean team, you reported to
10 Scott Laurence; is that right?

11 **A.** Scott Laurence was the -- sort of the lead governance.
12 Yes.

13 **Q.** Now, you mentioned it I think, but American had its own
14 clean team, correct?

15 **A.** Correct.

16 **Q.** And you worked with those members of American's clean
17 team?

18 **A.** Yes. We -- in the clean team portions, we were engaged
19 in discussing and doing with the American folks.

20 **Q.** And the clean team at JetBlue worked to construct the
21 nature of what ultimately became the Northeast Alliance,
22 correct?

23 **A.** Yeah, I mean, our -- our responsibility or the work we
24 were doing was to take sort of a concept of what became known
25 as the Northeast Alliance and sort of start to really flesh

1 it out and sort of see how it could work.

2 So it was kind of that, you know, due diligence,
3 however you want to describe it, but kind of working through
4 the different components and understanding them, to some
5 degree.

6 **Q.** Okay. And you've described it as due diligence, correct?

7 **A.** Yeah, that's one way to think about it.

8 **Q.** And as part of that due diligence, the clean team needed
9 to make sure the Northeast Alliance was commercially viable
10 and fit JetBlue's strategic goals, correct?

11 **A.** Well, that decision ultimately was what the senior
12 leadership team and the board would ultimately decide. Our
13 role was to help sort of do the work and be an input to that
14 business, that business decision process.

15 **Q.** But you understood that your work would be one of the
16 inputs to that decision, correct?

17 **A.** That work would be one of the inputs, correct.

18 **Q.** Now, as part of its evaluation of the Northeast Alliance,
19 your clean team developed a joint network schedule, correct?

20 **A.** Correct. One of the parts of the NEA we needed to at
21 least sort of directionally understand is what could a --
22 what could a network sort of potentially look like. So that
23 was one of the things we did in the clean team.

24 **Q.** That was part of the due diligence process?

25 **A.** Yeah.

1 **Q.** And this joint network schedule identified routes that
2 would make sense for JetBlue and American to fly within the
3 Northeast Alliance, correct?

4 **A.** Correct. You had to understand sort of how a network
5 could look sort of in whole and compete in whole. You did
6 have to have individual routes as a part of that.

7 **Q.** And the jet -- joint network schedule also identified the
8 frequencies with which American and JetBlue might serve those
9 routes within the Northeast Alliance, correct?

10 **A.** You certainly had to have sort of a preliminary start in
11 what frequencies could look like. I mean, that -- to sort of
12 see the network in its entirety and how it would compete, you
13 had to make some -- you had to have some working assumption
14 around frequencies.

15 **Q.** But it was just an assumption, correct?

16 **A.** Well, it was just sort of a preliminary workaround. It
17 wasn't an implementation exercise. It was really about
18 developing an understanding, sort of the potential that could
19 be there.

20 **Q.** Okay. And you used the joint network schedule to model
21 the revenue that might be generated under the Northeast
22 Alliance, correct?

23 **A.** Yeah, we used that for a number of purposes, but one of
24 the things we were doing was understanding directionally sort
25 of how the revenue forecast could look.

1 **Q.** And when you were working with the joint network
2 schedule, the clean team assumed that joint network would be
3 implemented in 2023, correct?

4 **A.** Well, implementation is a little bit of a different
5 topic, for the work we were doing in the clean team, and mind
6 you, this was sort of in the midst of COVID, you had to be
7 able to look out sort of far enough where you'd have some of
8 that implementation work, so we settled on 2023 as sort of
9 the broad way to think about it. But to do our work and
10 understand the Northeast Alliance, that wasn't sort -- that
11 was just one sort of assumption.

12 **Q.** Okay. And you are familiar with the term "steady state,"
13 correct?

14 **A.** Correct.

15 **Q.** Okay. And you understood the steady state -- you were
16 assuming that would be 2023, correct?

17 **A.** Yeah, in terms of kind of practically, you had to -- had
18 to sort of have at least some understanding of timeline, so
19 you needed sort of a little bit of a year to work off of,
20 yes.

21 **Q.** And in constructing a joint network schedule meant to be
22 implemented in 2023, you assumed JetBlue would be able to use
23 the fleet it was expecting to have in 2023, correct?

24 **A.** One of the things in understanding the NEA in general,
25 you want to make sure that you didn't sort of -- you didn't

1 go and sort of model things that wouldn't have any
2 resemblance to reality, whether that was fleet or gates or
3 things like that. So you wanted to understand at least some
4 scope of the reality you'd be operating in.

5 **Q.** And the fleet you were expecting to have in 2023 had more
6 planes than the fleet you actually had in 2020, correct?

7 **A.** We had an order book that we were using to help sort
8 of -- help with that assumption.

9 **Q.** And you were using that order book to assume more planes,
10 correct?

11 **A.** And that gave us a sense of kind of that resource that we
12 would have access to.

13 THE COURT: So does that mean, yes, that when
14 you're doing the modelling in 2020 about 2023, you were
15 modelling with the expectation, for 2023, you would have
16 those planes that were in the order book?

17 THE WITNESS: Yeah, we didn't want to -- yeah,
18 exactly. We don't want to model a set of outcomes where we
19 were building sort of financial analysis on orders that may
20 not exist in 2023, or we wouldn't -- we wouldn't be able to
21 get. I think -- I think you kind of think back to that
22 period, one of the things that was definitely on my mind was
23 a lot of aircraft delivery delays. So kind of that practical
24 reality of uncertainty around can an air bus deliver an
25 airplane? You had to make sure you weren't going to sort of

1 senior leaders with a revenue forecast or an earnings sort of
2 analysis that was completely isolated from reality, so you
3 had to take that into account.

4 THE COURT: So you were sort of relying on it, but
5 you wanted to discount it because of the sort of
6 uncertainties of deliveries?

7 THE WITNESS: You wanted to make sure that you
8 weren't completely operating in a sort of -- a world that
9 would be totally different than reality. You wanted to have
10 some degree of reality or baseline to reality.

11 THE COURT: Okay.

12 BY MR. CONGDON:

13 Q. In your analysis that you mentioned, you also set a
14 baseline, correct?

15 A. Yeah, correct.

16 Q. And that baseline was based on American and JetBlue's
17 actual flying from September of 2019; is that right?

18 A. That was -- that was the starting point for the baseline.

19 Q. Okay. And just to be clear, to follow up on the
20 questions, when you were constructing the potential joint
21 network schedule, you did assume you would have more planes
22 than you actually had in the baseline in September of 2019,
23 correct?

24 A. Correct.

25 Q. Okay. And part of the purpose of having the baseline was

1 that you could then compare the joint network schedule to
2 that baseline, correct?

3 **A.** Correct. We wanted to understand the various components
4 of network growth, the ability to compete for more customers,
5 things like codeshare, how that would operate through what
6 became known as the MGIA. So you had to have that sort of
7 A-versus-B analysis to sort of flesh that out.

8 **Q.** And you also wanted to model the financial implications
9 of what became the MGIA, correct?

10 **A.** We wanted to make sure that the financial due diligence
11 was there, that senior leaders and the board could make a
12 decision off of.

13 **Q.** Okay. Now, there came a point in time, Mr. Fintzen, when
14 you asked JetBlue's network planning team to see if some of
15 the revenue that the clean team was projecting seemed
16 reasonable to them, correct?

17 **A.** Correct. We were thinking of it as cross-checking some
18 of the analysis that we could do, obviously without giving
19 them the full context of the -- of the work we were doing
20 inside of the clean team.

21 **Q.** You showed them JetBlue's side of the model, correct?

22 **A.** Correct.

23 **Q.** You didn't show them American's side, right?

24 **A.** No, I don't believe we did.

25 **Q.** Okay. Let's take a look at a document. Mr. Fintzen, if

1 you could turn to your in binder what's been marked PX751. I
2 think it says it on the tabs.

3 MR. CONGDON: Your Honor, this has been admitted
4 into evidence.

5 THE COURT: Okay.

6 BY MR. CONGDON:

7 Q. And I'd like, if you could, to turn to the first in time
8 e-mail. So later in the document, I think it starts on the
9 bottom of page 4 and goes on to page 5. It's also on the
10 screen --

11 A. This is -- sorry. Getting kind of used to getting my lay
12 of the land here.

13 Q. Whatever is easier for you, Mr. Fintzen.

14 A. Okay.

15 Q. Okay. And you see at the bottom of page 4, there's an
16 e-mail from Eric Friedman sent on Wednesday, June 3, 2020, at
17 2:31 p.m.?

18 A. I do.

19 Q. Okay. And it looks like he sends it to Mr. Laurence,
20 Mr. Lusso, yourself, and then it looks like the other members
21 of the clean team at JetBlue; is that right?

22 A. That looks to be correct.

23 Q. Okay. And the subject is "Connie compare." Do you see
24 that?

25 A. Correct.

1 **Q.** And you mentioned before -- I know everyone knows this,
2 but Project Connie was the term for the Northeast Alliance,
3 correct?

4 **A.** Correct.

5 **Q.** Now, Mr. Friedman was a manager in the network planning
6 group at that time, correct?

7 **A.** Yes. He was a manager at that time.

8 **Q.** Okay. And Mr. Lusso, who is in the first line of the
9 "to" line, was his boss, correct?

10 **A.** Yes. Mr. Lusso was, at that point, the vice president of
11 network planning.

12 **Q.** Got it. And he reported to Mr. Laurence, who we already
13 talked about, correct?

14 **A.** That's correct.

15 **Q.** Okay. And if you look at Mr. Friedman's e-mail, in the
16 first couple of sentences, he writes, "Thanks for your
17 patience. We forecasted the arrangement and overall our
18 numbers align."

19 Do you see that?

20 **A.** I do.

21 **Q.** Okay. And when he says "forecasted the arrangement," you
22 understood he's referring to the network planning team
23 looking at the revenue that the clean team had been modelling
24 for the Northeast Alliance, correct?

25 MR. CRANER: Objection. Calls for speculation.

1 MR. CONGDON: I asked what he understood.

2 THE COURT: Overruled. You can answer.

3 If you want to ask it again.

4 THE WITNESS: Yeah. Can you just repeat it?

5 Sorry.

6 BY MR. CONGDON:

7 Q. Sure. When Mr. Friedman says "forecasted the
8 arrangement," you understood that he -- he's referring to the
9 network planning team looking at what the clean team had been
10 modelling for the Northeast Alliance, correct?

11 A. He would have been -- we would have been -- through the
12 protocols of the clean team, we would have been providing him
13 what information we could. So he would have been actually
14 seeing a portion of what the clean team was doing, but what
15 we were asking was for him to run the JetBlue network
16 planning and model.

17 Q. Okay. And take a look and see what you --

18 THE COURT: Off the schedule that you had
19 identified?

20 THE WITNESS: Off a portion of -- the JetBlue --

21 THE COURT: The portion that you could share.

22 THE WITNESS: Yeah.

23 BY MR. CONGDON:

24 Q. The JetBlue side of the schedule, correct?

25 A. Correct.

1 **Q.** And in the last two sentences of his e-mail, Mr. Friedman
2 writes, "That said, while the high-level revenue numbers
3 align, there are discrepancies at the route level. I know we
4 should not focus on those at the moment, but I would like to
5 highlight some specific examples and some other concerns that
6 need to be addressed." Do you see that?

7 **A.** I do.

8 **Q.** And then you see, under that, Mr. Friedman has a list of
9 items that he numbers 1 through 7. Do you see that?

10 **A.** I do.

11 **Q.** Okay. And we'll come back to this, but I want to skip
12 ahead to your response quickly. So if you turn two pages
13 forward, I think it's on page 2, it looks like you respond to
14 Mr. Friedman on that same day, June 3, 2020, at 6:48 p.m.?

15 **A.** Okay. I see that.

16 **Q.** Okay. And you write, "Hi, Eric. Thanks for this. Super
17 helpful." Is that correct?

18 **A.** Correct.

19 **Q.** And then in the third paragraph, you write, "On the more
20 specific stuff in this list for those in the weeds," correct?

21 **A.** Correct.

22 **Q.** Okay. And then you respond to Mr. Friedman's, the seven
23 items that he identified, and you organized a response under
24 the headings in bold and underlined, correct?

25 **A.** Correct.

1 **Q.** So here, if you look at the next page, on page 3, you've
2 got a heading that starts "On Number 5." Do you see that?

3 **A.** I do.

4 **Q.** And you understand that corresponds to you responding to
5 Mr. Friedman's fifth item that he identified in his original
6 e-mail?

7 **A.** Yes.

8 **Q.** Okay. So we're going to come back to this paragraph, but
9 you can see there's different shades of gray, so I want to
10 establish who is writing what in this paragraph.

11 So if you go back to the -- to the next e-mail, if
12 you go to the bottom of the first page, next e-mail in time,
13 it looks like at the very bottom of the first page,
14 Mr. Friedman writes back to you, that same night, June 3,
15 2020, at 7:32 p.m., correct?

16 **A.** Correct.

17 **Q.** And in the middle of his response, he writes, "Below are
18 my, 'stream of consciousness responses.'" Do you see that?

19 **A.** Correct.

20 **Q.** And so you understand that what he did is he then
21 imbedded his response to your e-mail into the body of the
22 e-mail you had sent, correct?

23 **A.** Correct.

24 **Q.** Okay. And finally, if we take a look at your e-mail on
25 the first page, again, that same night, June 3, 2020, at

1 9:41 p.m., and you write in the second sentence, "Some
2 quick-ish thoughts below." Do you see that?

3 **A.** Correct.

4 **Q.** And so what you did is you also imbedded your response to
5 Mr. Friedman in this body of that same e-mail you had
6 originally sent, correct?

7 **A.** Correct.

8 **Q.** A little bit tricky, but that sometimes happens with
9 e-mail, right? Okay.

10 So sort of putting it altogether, if we go back to
11 your response on page 4, under the heading "On Number 5," if
12 we pull that up, you see that there's sort of different
13 shades of gray in the text here?

14 **A.** Yeah. It probably was colors at the time. I see.

15 **Q.** Yep. And so the first, though, the darkest bold gray
16 represents your original e-mail, the middle shade of gray
17 represents Mr. Friedman's response, and then the lightest
18 shade of gray is your reply to that? Do you understand that?

19 **A.** Yes, I do.

20 MR. CONGDON: Okay. To try to make it a little bit
21 easier to read and not see, we have created a demonstrative
22 that just identifies Mr. Friedman's original fifth point and
23 then these three responses all separated out so it's a little
24 easier to read. I don't know -- we gave it to defendants --
25 I think there was an objection, but I think we've resolved

1 it, so -- it's in the binder.

2 MR. CRANER: Your Honor --

3 THE COURT: It's in the binder?

4 MR. CONGDON: Very front of --

5 THE COURT: PX751.

6 MR. CRANER: Your Honor, can you give us just one
7 moment?

8 THE COURT: Yes.

9 MR. CRANER: Your Honor, the only issue we had is
10 with the demonstrative. It doesn't reflect all the
11 recipients in the e-mail, and as long as that's understood
12 that --

13 THE COURT: Yeah, it's just who was writing in that
14 little paragraph.

15 MR. CRANER: Correct. Other than that, with the
16 addition that the plaintiffs made at the top of this
17 demonstrative, we have no objection.

18 THE COURT: Fine. You can go ahead and use it.

19 MR. CONGDON: Thank you, Your Honor.

20 If we can publish that.

21 BY MR. CONGDON:

22 **Q.** Okay. So you see all we've done here, Mr. Fintzen, is
23 put Mr. Friedman's original fifth item from his e-mail and
24 then the three responses we just discussed?

25 **A.** I do.

1 **Q.** Okay. So starting with Mr. Friedman's original e-mail,
2 when he says under number 5 is, "We still believe that we are
3 including value here that would have been generated anyway;
4 i.e., BUR Mint. It would be more appropriate to identify the
5 incremental value of the partnership as it pertains to this
6 and any other markets we intended to serve as part of our
7 five-year plan."

8 Do you see that?

9 **A.** I do.

10 THE COURT: What's BUR? Burbank?

11 THE WITNESS: Burbank, yes.

12 BY MR. CONGDON:

13 **Q.** And you understood when he said "i.e., BUR Mint," he's
14 giving you an example, correct?

15 **A.** Correct.

16 **Q.** And are you familiar with -- he references five-year plan
17 at the end. Are you familiar with JetBlue's five-year plans?

18 **A.** I'm certainly -- the concept and the business process,
19 yes.

20 **Q.** And those are created by the network planning group,
21 correct?

22 **A.** Portions of it are, correct.

23 **Q.** And that would be Mr. Friedman's responsibility?

24 **A.** We -- would be the network planning department's
25 responsibility. That's how they sort of break that up, it

1 would be -- you would have to ask network planning.

2 **Q.** Sure.

3 Moving down to your response, what you said is,
4 "Since we put all this flying through a revenue share model
5 in what is intended to be a metal neutral JV, we need to have
6 route level forecasts to ensure we get the RSA right."

7 Do you see that?

8 **A.** Yes.

9 **Q.** And RSA is revenue sharing, correct?

10 **A.** Yeah. That's a shorthand we were using for what is now
11 the MGIA.

12 **Q.** Thank you. Got my next question.

13 And when you write, "what was intended to be a
14 metal neutral JV," you're referring to what became the
15 Northeast Alliance, correct?

16 **A.** Yeah, as we were working sort of through Project Connie
17 and the Northeast Alliance.

18 **Q.** And so just finishing your response here, you write, "I'm
19 actually more interested in how revenue share changes if
20 reflects different routes, but we need a starting point. In
21 every route for both airlines that is in scope impacts the
22 RSA economics."

23 Do you see that?

24 **A.** I do.

25 **Q.** And so, for purposes of valuating the economics of the

1 RSA, what became the MGIA, you had to look at all of the
2 flying regardless of if it was something JetBlue would have
3 been doing anyway, correct?

4 **A.** We needed to look -- we needed to do a holistic analysis.

5 **Q.** So it didn't matter for that purpose whether it was
6 something JetBlue would have flown anyway, correct?

7 **A.** Well, I wouldn't -- I wouldn't describe it that way.

8 **Q.** Okay.

9 THE COURT: Are you saying you wanted to know how
10 each route played out in terms of the revenue sharing
11 formula, so what that would mean in terms of what the route
12 would do to the revenue you would get?

13 THE WITNESS: One of -- one of the things we really
14 wanted to understand is that, let's say we had flown a route
15 for many, many years. By virtue of having access to this
16 bigger, broader network, we could actually be selling another
17 customer into a route that already existed. We would have
18 codeshare as an example of connections that linked different
19 routes.

20 So you weren't just thinking about the new routes
21 and the specific growth that was added. That would have sort
22 of a network effect on all of the routes within the NEA,
23 because we would really be competing to fill more seats with
24 more customers. That would be new customers to the -- all of
25 what JetBlue was doing. And that was sort of the -- a bit of

1 the context I was trying but couldn't really fully at that
2 point give to Eric.

3 THE COURT: So you were looking more at the overall
4 rather than any individual route?

5 THE WITNESS: To get to the overall, you kind of
6 had to have the individual routes, because you couldn't
7 totally separate, but the purpose was to understand the
8 interaction of different routes, less than, really,
9 isolating, making more of a implementation decision around
10 individual routes, is -- way ahead of -- way down the road at
11 that point.

12 THE COURT: Go ahead.

13 BY MR. CONGDON:

14 Q. But on a given route, you were projecting a certain
15 amount of flying, correct, under the joint network schedule?

16 A. Well, the way these models have to work is they have to
17 work sort of bottoms up and so you do have to have some of
18 those route-level dynamics right.

19 Q. Right. And when you were projecting a certain amount of
20 flying out to 2023 under the NEA, you weren't necessarily
21 taking into account whether that flying would have been
22 happening anyway without the Northeast Alliance, correct?
23 You were just projecting out?

24 A. Well, what we were trying to understand was the kind of
25 opportunities and sort of the -- the impact the NEA could

1 have on our ability to compete sort of holistically and
2 overall.

3 So, you know, an example of the Burbank route
4 specifically, what Mr. Friedman wouldn't see was some of the
5 new growth we were looking at for American, but American was
6 looking at to place, like, Orange County. And that would
7 actually have an impact of putting a much better schedule in
8 front of, say, a corporate traveler from New York to the
9 LA Basin.

10 And so what we were trying to understand -- and you
11 couldn't be too -- at a point, you become granular to the
12 point it sort of got in the way of the analysis, but we were
13 trying to understand that kind of holistic customer impact
14 and customer potential. And that's, obviously, the -- the
15 pieces that Mr. Friedman didn't have the context or the
16 visibility into.

17 **Q.** Sure. He couldn't see what you were projecting on the
18 American side, right?

19 **A.** More than that, he couldn't see sort of how the network
20 relevance was being developed in conjunction with individual
21 route decisions.

22 **Q.** So with respect to Burbank Mint, for instance, you're
23 saying it could have been the case that there was actually
24 more revenue for JetBlue because of the network effects in
25 the Northeast Alliance than Mr. Friedman was saying, right?

1 **A.** In my mind, in my mind using that example, I wanted to
2 test if the Northeast Alliance and the ability to compete for
3 more customers could actually mean even more frequencies than
4 we otherwise would have. So it's not just the existence of a
5 route, but it's the opportunity to actually fly that route
6 better.

7 In transconference, it's to put a JetBlue schedule
8 that's more robust for both sides of the market. So there's
9 a lot of interesting, probably more specific than they needed
10 to be, examples; but they captured that notion of how our
11 customer base could benefit and be grown by having access to
12 this much -- this much better network product.

13 **Q.** Okay. But it wasn't your position, Mr. Fintzen, that
14 JetBlue wouldn't have flown Burbank Mint at all without the
15 Northeast Alliance, is it?

16 **A.** That really wasn't -- that wasn't germane to the analysis
17 we were doing.

18 **Q.** Okay. Looking at Mr. Friedman's response to you, he
19 writes, "I'm a bit confused on this. Forgive me if I'm being
20 dense, but my point is just that we intend to fly BUR Mint
21 and other five-year plan markets regardless of Connie."

22 Do you see that?

23 **A.** I do.

24 **Q.** And he continues, "The current valuation of Connie
25 includes all of the market revenue. We would have generated

1 most of that revenue anyway, so what portion of the revenue
2 was 'enhanced revenue driven by the JV'?"

3 Do you see that?

4 **A.** I do.

5 **Q.** And then he writes, "If we're looking at this from a
6 'What does JetBlue look like with Connie versus without?'
7 we're currently attributing a lot of revenue to Connie that
8 would have already existed."

9 Do you see that?

10 **A.** I do.

11 **Q.** And then he asks you, "Does that make sense," right?

12 **A.** I see that.

13 **Q.** Okay. And, again, you understood Mr. Friedman to be
14 saying that, when trying to calculate the incremental value
15 of the Northeast Alliance, you shouldn't count value that
16 would have been generated anyway based on JetBlue's plans to
17 grow prior to the Northeast Alliance, correct?

18 **A.** The challenge here was Mr. Friedman did not have access
19 to see the analysis we were actually doing. So his -- he
20 didn't have -- he was -- he might have -- he's suggesting
21 sort of how he might do the analysis, but he was doing that
22 without actually being in the -- without in -- without the
23 virtue -- without that -- being in the clean team, where he
24 saw the actual work we were doing and what we were trying to
25 analyze.

1 **Q.** Sure. But you understood what he was saying was that
2 when trying to calculate the incremental value of the NEA,
3 you shouldn't count value that would have been generated
4 anyway based on the pre-Northeast Alliance plans to grow,
5 correct?

6 **A.** I --

7 **Q.** That's what you understood him to be saying?

8 **A.** I understood him to be suggesting sort of an analytical
9 mechanism or an analytical exercise.

10 **Q.** Okay. And you responded, "Yes, totally, and we need
11 that, too." Do you see that?

12 **A.** I do.

13 **Q.** And there, you were saying you understood his point, the
14 point that he was making that we just discussed, correct?

15 **A.** Yeah. And in this exchange -- and I can't recall how
16 much time Eric Friedman had actually been involved in,
17 notionally, the Project Connie. I don't remember if he had
18 much, if any, context.

19 So I was sort of -- I understood that he was a
20 manager sort of being asked a bunch of questions to run some
21 models -- didn't really have that context. So I'm sort of --
22 I'm helping along through that, that process, and kind of
23 being patient with that.

24 **Q.** Sure.

25 THE COURT: Well, you didn't want to go to

1 Mr. Laurence and say this would generate X amount of revenue
2 if you do the joint venture and have that number be the same
3 or less than what the five-year plan said JetBlue would
4 generate without the joint venture and simultaneously say it
5 seems like, from the clean team's perspective, it's a good
6 idea.

7 THE WITNESS: Yeah, that's kind of the -- I mean,
8 better way to say what I was saying before. You wanted to
9 find where you could kind of draw in new customers --

10 THE COURT: Right.

11 THE WITNESS: -- that would turn into that revenue.
12 You can say --

13 THE COURT: And make more money than you otherwise
14 would have made?

15 THE WITNESS: Right. And sort of have that growth
16 in the customer base that would be kind of unlocked and sort
17 of turbocharged.

18 THE COURT: Right. Okay. Go ahead.

19 BY MR. CONGDON:

20 **Q.** And when you say -- Mr. Fintzen, when you say, "We need
21 that, too," do you see that?

22 **A.** Sure.

23 **Q.** Right. You're referencing that what Mr. Friedman was
24 advocating was something else you needed to do. It just
25 wasn't what you were doing, right?

1 **A.** Right. Yeah, I'm being patient that he doesn't have the
2 context, so I was -- it wasn't something on our to-do list or
3 something that the clean team really felt was going to help
4 make that business -- help inform that business decision.

5 Also, to the extent he needed to do some work with
6 the five-year model, I wouldn't have known what that was, so
7 I similarly wouldn't have had context to any work he would
8 need to do. So I'm just acknowledging that point and
9 honestly trying to move us on.

10 **Q.** Okay. But you agree, at least in theory, that when
11 measuring the incremental value generated by the Northeast
12 Alliance, you shouldn't count value that would have been
13 generated even in the absence of the Northeast Alliance,
14 correct?

15 **A.** My responsibility and my -- my work here was to help
16 determine and help business leaders make a business decision.
17 And I -- I don't know that that would have -- that analysis
18 would have helped us with that effort. So, no, it wasn't
19 something we -- was in the clean team -- we were going to
20 focus on.

21 **Q.** Okay. Let's take a look --

22 THE COURT: It wasn't focused on whether you would
23 make more money with it than without it?

24 THE WITNESS: Well, in that sense, right, you --

25 THE COURT: I mean, isn't that the bottom line?

1 THE WITNESS: The bottom line, but to do that, you
2 didn't need to sort of go through and really sort of parse
3 out the base and the different components. You needed to
4 look at sort of the starting point and kind of have this sort
5 of preliminary sort of directional vision of the network, and
6 then look at the two. And that would actually answer the
7 important question you're raising, which is does this make
8 our revenue higher and our margins stronger?

9 And so you didn't need to do the level of analysis
10 that's being suggested --

11 THE COURT: I see.

12 THE WITNESS: -- to answer that question.

13 BY MR. CONGDON:

14 **Q.** But, Mr. Fintzen, when you do that exercise starting with
15 the baseline in 2019 and compare to what the pre -- the joint
16 network schedule meant to be implemented in 2023 shows,
17 you're missing what growth JetBlue might have done in
18 between, correct?

19 **A.** We -- we did a process to -- you know, we were sitting in
20 April of 2020. We used a September 2019 base. There were a
21 set of routes that had been announced and put in the market
22 in that interim period. So, of course, we adjusted the
23 analysis to sort of bring that in. We dealt with things like
24 seasonality.

25 There's a lot of things that -- you have to get

1 directionally right, sort of small inputs, just to have
2 confidence that the overall -- the overall revenue result
3 we're talking about was -- would at least give you the
4 insight you needed.

5 **Q.** Well, let me ask this, Mr. Fintzen: Is it your position
6 that, without the Northeast Alliance, JetBlue wouldn't have
7 grown at all to 2023?

8 **A.** The purpose and intent -- the strategy with the Northeast
9 Alliance was to -- to add to, enhance, and turbocharge that
10 growth. So --

11 **Q.** So that wasn't my question. My question was, is it your
12 position, Mr. Fintzen, that absent a Northeast Alliance,
13 JetBlue would not have grown at all to 2023?

14 **A.** So my role in the clean team was not to worry about --
15 about those decisions. There's -- that was -- there's a
16 fleet team, an FMA [sic] team, a network planning team --

17 THE COURT REPORTER: I'm sorry; say that acronym
18 again.

19 THE WITNESS: Which? FP&A, financial planning and
20 analysis. Sorry.

21 So there's a whole host of teams that their
22 day-to-day responsibility is to do the work and make that
23 decision you're talking about. Our job was to focus on what
24 is the opportunity uniquely that the NEA provides.
25

1 BY MR. CONGDON:

2 Q. And one of those people would have been Mr. Friedman,
3 correct, as part of the network planning group?

4 A. Sure. Correct.

5 Q. Okay. So your answer, though, is you don't know whether
6 JetBlue would have grown at all absent the NEA to 2023?

7 A. My answer is -- my answer is we historically talked about
8 a mid to high-single digit growth rate. We had an order
9 book. In terms of managing that growth, that's never been my
10 day-to-day responsibility at JetBlue and that's not the task
11 I had at that time --

12 Q. Right.

13 A. -- on the clean team.

14 Q. That responsibility rests with Mr. Laurence and network
15 planning, correct?

16 A. Network planning, finance, senior leadership.

17 Q. Now, if you wanted to identify the single type of
18 incremental value that Mr. Friedman is talking about, one way
19 would have been to compare the joint network schedule you
20 were projecting for 2023 with JetBlue's growth plans without
21 the NEA for 2023, correct?

22 A. I'm not sure that would have been the most effective way
23 to do it.

24 Q. Would have been an apples-to-apples comparison, right?

25 A. No, because you needed to understand two sort of

1 relatively simple metrics. You needed to understand revenue
2 growth and margin in sort of the pre-NEA, sort of 2019,
3 pre-COVID era, and kind of what that margin enhancement would
4 be and that revenue growth would be and they all sort of
5 interact with each other. So I -- I don't know -- I don't
6 think going about it that way would answer that question.

7 **Q.** Well, in fact, you had considered doing that sort of
8 exercise, didn't you?

9 **A.** Well, you're going to consider a variety of different
10 ways. I felt really good about the approach that we used in
11 terms of having the finance -- bear in mind, my background is
12 coming from the finance side of the business. I was -- it
13 was very much how I felt the right financial analysis would
14 be, to look at that 2019 starting point and that sort of
15 Connie sort of NEA world in, you know, 2023.

16 **Q.** You were looking at it as a financial analysis?

17 **A.** Well, I'm helping frame inputs to business decisions. My
18 background is finance, so I'm going to have a bit of that
19 perspective, but I thought that was a helpful framework for
20 business leaders to make a strategic decision up to and
21 including the board.

22 **Q.** All right. Well, let's turn in your binder to a document
23 that's been marked PX707.

24 MR. CONGDON: And this is in evidence, and we've
25 just got a demonstrative that I understand defendants have no

1 objection to that just identifies the sender and recipient of
2 the message and redacts the phone numbers.

3 THE COURT: Fine.

4 BY MR. CONGDON:

5 Q. Mr. Fintzen, this is a text message that you sent on
6 May 29, 2020, at 1:30 p.m., correct?

7 A. Correct.

8 Q. And that's just five days before the exchange on June 3rd
9 we were just looking at, correct?

10 A. Correct.

11 Q. I have to remember whether May is 30 or 31 days.

12 A. Yeah.

13 Q. And you sent this to Steve Priest, correct?

14 A. Correct.

15 Q. Mr. Priest was the chief financial officer at JetBlue at
16 the time?

17 A. Correct.

18 Q. And you write in the message, "BTW" -- I assume that
19 means, "by the way"?

20 A. Yes.

21 Q. You write, "Some of the ask on out-year fleet for Urs is
22 from Connie Project and things we expect DOJ to ask for in
23 June." Do you see that?

24 A. I do.

25 Q. And "Urs" refers to Ms. Ursula Hurley at JetBlue; is that

1 right?

2 **A.** Correct.

3 **Q.** She was the treasurer at JetBlue at the time?

4 **A.** She would have been -- at that point, she was treasurer,
5 as well as had fleet and sourcing.

6 **Q.** Got it. And you reference an ask for out-year fleet. Do
7 you see that?

8 **A.** Correct.

9 **Q.** What does that mean?

10 **A.** Don't exactly recall, but that period -- that period,
11 there would have been a few things going on. And Steve also
12 was my boss at the time. The clean team would have been
13 seeking more and more inputs from teams throughout JetBlue,
14 most of which, similar to Mr. Friedman, didn't necessarily
15 have context of what we were working on, because five or so
16 of us were dedicated to Connie.

17 Everyone else was dedicated and focused, almost
18 24/7 -- I mean, it's not quite an exaggeration -- to survival
19 of JetBlue. And so at that point, the -- things like the
20 five-year plan or things like the business plans would have
21 been changing by those teams responsible for it. And so I
22 think we would have been asking for different inputs and
23 probably adding work to really strain teams at the time. And
24 I -- looks like I would have been flagging that these were
25 requests so Steve knew, so that he made sure that teams were

1 going to, you know, turn information to us.

2 **Q.** Because you reference Connie project and DOJ. You wanted
3 to emphasize that this was pretty important, right?

4 **A.** Yeah, these were -- if teams hadn't asked and we were
5 gathering informing, it was easy for something at that point,
6 when teams were under so much day-to-day pressure that, you
7 know, an e-mail might get lost or get stuck.

8 **Q.** Okay. You were emphasizing this was important to
9 collect, right?

10 MR. CRANER: Objection. Misstates the document.

11 THE COURT: So the question again?

12 MR. CONGDON: I'm asking Mr. Fintzen if he was
13 sending this to his boss and referencing Connie project and
14 DOJ to emphasize that the request was important.

15 THE COURT: Overruled.

16 You can answer that question.

17 THE WITNESS: I would have been -- I mean,
18 everything those teams were doing all day, every day at that
19 point was important. It's just making sure that the teams
20 were aware of the request so they didn't get lost. That's --
21 it's an easy thing to do and happen in normal times. It was
22 exceptionally common in that period.

23 BY MR. CONGDON:

24 **Q.** Okay. And when you say "things we expect DOJ to ask for
25 in June," you're referencing the regulatory review you were

1 expecting from the Department of Justice relating to the
2 Northeast Alliance?

3 **A.** Yeah, I wouldn't -- we would have been starting to, you
4 know -- starting to prepare for that or potentially gather
5 information. I don't know specifically what pieces of
6 that --

7 **Q.** You expected to receive scrutiny from the Department of
8 Justice, correct?

9 **A.** Sure. Typically, relationships in the airline industry
10 get scrutiny.

11 **Q.** And then you write in the last sentence, "It's all for
12 the counterfactual argument on what we probably look like in
13 terms of fleet and capacity by 2023 if there isn't a JV."

14 Do you see that?

15 **A.** I do.

16 **Q.** Okay. And that counterfactual you're referring to is
17 comparing what JetBlue would look like in 2023 with the
18 Northeast Alliance against what it would look like in terms
19 of fleet and capacity by 2023 without the Northeast Alliance,
20 right?

21 **A.** I don't think I'm referencing that analysis, no.

22 **Q.** Well, that's what you say when you reference a
23 counterfactual argument, right, is "what we would probably
24 look like in terms of fleet and capacity by 2023 if there
25 isn't a JV," right?

1 **A.** Right. But remember, we were, from the conversation
2 earlier, talking about the fleet in the order book and what
3 we would have to work with and making sure our analysis had
4 some -- some resemblance to reality. That reality would have
5 been potentially very quickly changing because of COVID. And
6 so, obviously, I wouldn't have been working with those teams,
7 and I would have wanted to make sure that, as decisions
8 are in fleet types or order books were being made, that there
9 was at least some awareness or understanding on both sides
10 that this work was going on.

11 **Q.** You were expected to have to make a counterfactual
12 argument to the Department of Justice comparing what you
13 looked like in 2023 with the Northeast Alliance versus what
14 you would have looked like without, right?

15 **A.** Sure. But that would have related to the business
16 decisions that different teams were making about how to
17 manage COVID.

18 **Q.** And that counterfactual is similar to what Mr. Friedman
19 was suggesting just a few days later, correct?

20 **A.** I don't know that I draw that line, no.

21 **Q.** Well, he phrased it as, in his e-mail, "What does JetBlue
22 look like with Connie versus without," correct?

23 **A.** Sure. I suppose he wrote that, but I don't -- I don't
24 read my own language here as tying that together.

25 **Q.** Okay. You don't view that as a similar concept to what

1 you were expressing in this e-mail -- in this text message to
2 Mr. Priest here?

3 **A.** No, I don't.

4 **Q.** Let's turn back to PX751.

5 THE COURT: What's counterfactual about this?
6 Before you turn back, what's counterfactual?

7 THE WITNESS: I think here, it would have been
8 anything that was changing in the order book or any decision,
9 so, for instance, exit suddenly the E190. Any change in that
10 fleet plan that would have been contemplated or moving around
11 potentially at that time. The -- kind of the world we were
12 operating in was so volatile.

13 THE COURT: So is what you're saying there and here
14 that you couldn't easily separate it. You couldn't easily do
15 this what would JetBlue look like with a joint venture versus
16 what would JetBlue look like without the joint venture
17 because the fleet and the capacity and all these other
18 business decisions are being made for survival purposes in
19 the middle of COVID also affect all that. So it's not like
20 the -- it's not the same as when, in 2016, the five-year plan
21 might have been reasonably on target for where you were in
22 2019?

23 THE WITNESS: Oh, that was definitely a component.
24 I think still going back and looking at the 2019, sort of --

25 THE COURT: Sure.

1 THE WITNESS: -- margin and growth and sort of
2 incremental margin, but, yes, the environment we were
3 operating in was changing by the day in terms of what the
4 fleet would look like and kind of what the -- whatever the,
5 quote/unquote, stand-alone or sort of business plan was going
6 to look like was incredibly uncertain at that point, and
7 even, you know, in the months that followed.

8 THE COURT: So -- and it's counterfactual -- what
9 you were anticipating from DOJ that was counterfactual I
10 still don't quite understand.

11 THE WITNESS: I think it would have been what
12 does -- what -- sort of what is the sort of post-COVID plans
13 for how JetBlue is going to run the business. It's that
14 notion of what you were mentioning.

15 THE COURT: I see.

16 THE WITNESS: You need a stability in any plan at
17 that time. So kind of what was going on elsewhere in the
18 business was changing in a way that I certainly never
19 experienced in my -- in my -- in my time in the industry.

20 THE COURT: I see okay.

21 Go ahead.

22 BY MR. CONGDON:

23 Q. Just one last question following up on that. I mean, you
24 say counterfactual argument. I mean, you say what you
25 expected it to be, right? "What we probably look like in

1 terms of fleet and capacity by 2023 if there isn't a JV,"
2 right?

3 **A.** Right. And that goes to that volatility and what was
4 going on for the folks that were trying to manage the
5 business through COVID.

6 **Q.** Okay. Turning back quickly to PX751. And I'm going to
7 point you to page 2. And pull up the first response you
8 actually give to Mr. Friedman on a different topic under the
9 heading Number 4 and Number 1, "Actually something of a
10 subset." Do you see that?

11 **A.** Can you -- sorry. Can you highlight it like you were
12 doing?

13 Oh, I see. Yeah. Yeah, sorry. I was looking too
14 much in the text.

15 **Q.** Okay. And let's focus on the second paragraph of your
16 response, if we could. And I just -- looking at the first
17 sentence there, do you understand you're responding to
18 Mr. Friedman, who had identified some concerns with the way
19 the clean team was modelling frequencies on the shuttle
20 routes?

21 **A.** Yes.

22 **Q.** Okay.

23 **A.** Correct.

24 **Q.** And in the second sentence of the second paragraph, you
25 wrote, "Once deal is done, it's you guys doing joint planning

1 work; and I'm sure there is the not so small issue of
2 business travel recovery and phasing that will go into
3 finding the right frequency year by year."

4 Do you see that?

5 **A.** I do.

6 **Q.** When you say, "It's you guys doing joint planning work,"
7 you're referencing that it would actually be the network
8 planning group that would actually implement the schedule,
9 correct?

10 **A.** Yes. This is -- our work was -- there -- the
11 implementation work would ultimately fall to the business
12 teams that were doing that, have the day-to-day
13 responsibilities.

14 **Q.** They could change the schedule from what you guys were
15 putting together on the clean team, right?

16 **A.** Yeah, the purpose of the clean team schedule is not to
17 make granular route decisions. It was to get a directional
18 understanding of what was possible.

19 **Q.** And, in fact, sitting here today, the network is --
20 network schedule is different than what you guys had
21 predicted on the clean team, right?

22 **A.** I -- I would imagine, yes. I haven't done any
23 reconciliation.

24 **Q.** And then you wrote in the next sentence, "But for purpose
25 of getting deal constructed, understanding the revenue share

1 agreement and the deal through DOJ using 2023 as steady state
2 year, I think we are at a workable place."

3 Do you see that?

4 **A.** I do.

5 **Q.** And, again, the reference is to 2023 as the steady state
6 year, right?

7 **A.** Yeah. That was the kind of the moment in time we were
8 marking that was sufficiently post-COVID.

9 **Q.** Okay.

10 **A.** Or we thought might be sufficiently post-COVID.

11 **Q.** We'll see, right?

12 **A.** We'll see.

13 **Q.** And, again, the reference to DOJ -- while JetBlue and
14 American were constructing this schedule as part of the clean
15 team, you knew regulatory scrutiny was coming from the
16 Department of Justice, correct?

17 **A.** Sure.

18 MR. CONGDON: Your Honor, we're going to switch to
19 something else. I don't know if --

20 THE COURT: If you are. This is a good time for
21 the break. We'll take the morning break now. Stand in
22 recess.

23 (Court in recess at 11:01 a.m.

24 and reconvened at 11:13 a.m.)

25 THE COURT: Go ahead.

1 MR. CONGDON: Thank you, Your Honor.

2 BY MR. CONGDON:

3 Q. Mr. Fintzen, just a couple of follow-up questions. We
4 were talking about the counterfactual that you had referenced
5 in your text to Mr. Priest. Do you recall that?

6 A. I -- I do.

7 Q. And do you -- you represented that there would have been
8 uncertainties in trying to predict the fleet and capacity
9 plans going out in time due to COVID, correct?

10 A. You said uncertainties?

11 Q. Yes.

12 A. Yeah. It was an extremely volatile period.

13 Q. Well, those same uncertainties also would have impacted
14 your ability to create the joint network schedule you were
15 working on with the clean team, correct?

16 A. So correct, but we were making a long-term decision where
17 you needed to look to a period where you can be comfortable
18 that you were kind of beyond those uncertainties. That was
19 kind of the point of the steady state concept and looking out
20 to the -- not that we could, but looking out kind of into
21 that post-COVID landscape.

22 Q. And any five-year plan that JetBlue was creating in 2020
23 would have been doing the same thing, correct?

24 A. I don't know if there was a five-year plan in 2020.

25 Q. Okay. But at least at the time you were predicting that

1 2023 would be the time when you would be potentially back
2 from COVID, correct? That was the idea of the steady state?

3 **A.** Well, the idea is you're entering in a long-term
4 commercial agreement. It's not about 2023. You're about
5 understanding the -- is that a good strategic decision for
6 JetBlue? So it's -- it's less about the precise timeline and
7 more directionally about the business decision of this
8 relationship.

9 **Q.** Right. But in that process, you were assuming 2023 --
10 you were predicting, but you were predicting that 2023 was
11 the time when COVID might subside and you would be back to
12 somewhat normal, correct?

13 **A.** I mean, yes and no. You had to mark a moment in time.
14 If it was '24, '25 -- or '22 would have been better. You
15 just had to get sort of the -- get beyond that volatility,
16 because, again, you're analyzing modelling, a long-term
17 decision on sort of how you can turbocharge your growth and
18 bring in more customers and do all of those things. It's not
19 about a specific point in time, but you have to make some
20 basic assumptions around that and some modelling.

21 **Q.** Correct. And the basic assumption you made was 2023,
22 right?

23 **A.** That was the assumption that we used, correct.

24 **Q.** Okay. And if JetBlue were creating five-year plans in
25 2020, that would have also included 2023, correct?

1 **A.** Again, if there were such plans.

2 **Q.** Okay. And I just want to make sure I understand, is it
3 your testimony that you did not consider a 2023 standalone
4 plan as a counterfactual to the joint network schedule?

5 **A.** What we were looking at would have been the fleet plan
6 for 2023. The analysis we were doing was, like I had
7 mentioned, kind of that revenue growth potential, that
8 incremental operating margin potential, all of the work that
9 we thought would best inform the business decision.

10 **Q.** So is the answer yes or no? I'm just trying to
11 understand. Did you or did not consider comparing a
12 standalone 2023 growth plan to the 2023 joint network
13 schedule?

14 **A.** I don't believe -- the way we would have thought about
15 that, to try to help answer your question, is we would have
16 thought about what are the incremental opportunities we could
17 find and create to add opportunity for JetBlue to grow. That
18 would have been kind of the theme of that.

19 **Q.** Mr. Fintzen, it's a yes-or-no question. Did you or did
20 you not consider a counterfactual comparing a 2023 standalone
21 growth plant to your 2023 joint network schedule under the
22 Northeast Alliance?

23 **A.** So just to understand your question, are you talking
24 about sort of a year -- taking a year of the five-year plan?
25 Is that what you're --

1 THE COURT: Did you do that comparison?

2 THE WITNESS: No, I don't recall doing that
3 comparison.

4 BY MR. CONGDON:

5 Q. Did you consider doing that comparison?

6 A. Again, at that point, I don't know -- I don't know
7 what -- in the period of COVID, I don't -- I don't know what
8 we would have compared it to.

9 Q. That's my question -- my question is simply did you
10 consider doing that comparison? Yes or no?

11 A. If we did, I didn't -- I don't think that would have
12 helped the sort of incremental growth and incremental margin
13 we were trying to analyze.

14 Q. That wasn't the question, Mr. Fintzen. For the third
15 time, yes or no, did you or did you not consider it?

16 A. Not that I recall.

17 Q. Mr. Fintzen, if you can turn to tab PX297 of your binder,
18 I want to talk about another counterfactual you did consider.

19 A. I'm sorry. 297?

20 Q. Yeah, PX297.

21 MR. CONGDON: And, Your Honor, this has already
22 been admitted into evidence, so we can go ahead and publish.

23 THE COURT: All right.

24 BY MR. CONGDON:

25 Q. Mr. Fintzen, do you have the document in front of you?

1 **A.** I do and on the screen.

2 **Q.** All right. And this is an e-mail chain between yourself,
3 others at JetBlue, and others at American, correct?

4 **A.** Correct. Looks like clean team and others.

5 **Q.** So members of the clean team at JetBlue and members of
6 the clean team at American?

7 **A.** Correct.

8 **Q.** If you take a look at the e-mail in the middle of the
9 second page, an e-mail from Jordan Pack dated Thursday,
10 May 21, 2020, at 5:06 p.m. do you see that?

11 **A.** I do.

12 **Q.** Jordan Pack was one of the American members of the clean
13 team, correct?

14 **A.** Correct.

15 **Q.** And if you look down into the text of his message, he
16 writes, "Hi, all -- following up on the v4 schedule." Do you
17 see that?

18 **A.** I do.

19 **Q.** Do you recall what the v4 schedule was?

20 **A.** V4 I believe was an input American -- you see Jordan --
21 it was an input they asked us for. I believe that explains
22 sort of the construct of the input, and then we provided the
23 American output, but --

24 **Q.** Okay. So let's take a look, then, at what he says. He
25 writes, "This schedule" -- and you understand he's referring

1 to the v4 schedule from the sentence before?

2 **A.** Yes.

3 **Q.** Okay. He writes, "This schedule serves as our best guess
4 as to what would have happened in 2019 if American and
5 JetBlue had the partnership we are jointly proposing." Do
6 you see that?

7 **A.** I do.

8 **Q.** And then he writes, "The key difference with this,
9 compared to v2 is that we have to fund aircraft and keep
10 resources neutral."

11 Do you see that?

12 **A.** I do.

13 **Q.** Okay. And so the v4 schedule he's referring to is a
14 joint network schedule that uses the fleet constraints that
15 JetBlue had in September of 2019, correct?

16 **A.** Correct.

17 **Q.** And that's different from the joint network schedule we
18 were talking about before, where you were able to assume the
19 fleet JetBlue had in 2023, correct?

20 **A.** Correct. Our analysis was all working off -- I think it
21 was called v2.

22 **Q.** Okay. So the v2 schedule is the one we were talking
23 about before with the 2023 fleet?

24 **A.** Correct.

25 **Q.** And the v4 schedule kept the 2019 fleet constant,

1 correct?

2 **A.** Correct. From the inputs they were asking for.

3 **Q.** Okay. And so the 2019 fleet, keeping it constant,
4 required moving planes from other parts of JetBlue's network
5 to fund any growth within the Northeast Alliance part of the
6 network, correct?

7 **A.** That would have been the resource constraint that they
8 were asking for in the input.

9 **Q.** Okay. Well, and if you put together that v4 schedule,
10 that's what would happen, right? You would have to pull
11 funding from outside the NEA network to fund the growth
12 inside the NEA network, correct?

13 **A.** Yeah, correct.

14 **Q.** Okay. And that meant that flying outside of the
15 Northeast Alliance in this version of the schedule went down,
16 compared to flying inside the Northeast Alliance, correct?
17 Sorry strike that.

18 It meant that flying outside the Northeast Alliance
19 went down in this schedule compared to the base schedule,
20 correct?

21 **A.** What it says --

22 Repeat that.

23 **Q.** Sure. Under the v4 schedule, you had to keep the fleet
24 constant under 2019 constraints. Flying outside of the
25 Northeast Alliance went down in that schedule as compared to

1 the baseline, correct?

2 **A.** The v4 schedule, as I recall, just marked the 2019 fleet.
3 It -- it was hard for us to exactly -- it wasn't the
4 analysis -- it wasn't an analysis we were doing, so it was
5 hard for us to understand really what -- what the purpose of
6 what it was. So it was just kind of imposing a constraint in
7 an analysis that we didn't believe was useful and moving
8 things around.

9 **Q.** Sure. My question is, given that constraint, in order to
10 fund flying within the Northeast Alliance, under the v4
11 schedule, flying outside of the Northeast Alliance went down
12 as compared to the baseline, correct?

13 **A.** Yeah. Because you -- you're almost -- your starting
14 point was as if all else was held constant, which seemed to
15 be the starting point they wanted for some analysis.

16 **Q.** So the answer was yes?

17 **A.** Yeah.

18 **Q.** Now, let's go to your response to Mr. Pack on the first
19 page of the e-mail, on the document, beginning on the very
20 bottom of the first page, and then it goes on to the second
21 page.

22 Do you see you responded on Friday, May 29, 2020,
23 at 7:56 a.m.?

24 **A.** Correct.

25 **Q.** Okay. And that's eight days after Mr. Pack's e-mail on

1 May 21st?

2 **A.** Correct.

3 **Q.** And you write, "Our v4 data pack with adjusted
4 frequencies and aircraft types is posted up in the shared
5 folder."

6 Is that right?

7 **A.** Correct.

8 **Q.** That represents you did put together a v4 data pack,
9 correct?

10 **A.** We -- I remember we -- we tried the best we could to
11 provide the input they were asking for. It was not something
12 we really -- I remember not really understanding exactly what
13 they were going after. So we gave them what we could based
14 on the inputs as best we understood.

15 **Q.** You gave them what you referred to here as the v4 data
16 pack with adjusted frequencies in aircraft --

17 **A.** We created a matrix for them, I think, was the
18 deliverable or the input.

19 **Q.** Okay. And you posted that in the shared folder for
20 American to receive, correct?

21 **A.** Correct.

22 **Q.** Mr. Fintzen, you're familiar with Compass Lexecon,
23 correct?

24 **A.** I am.

25 **Q.** They're an economic consulting firm engaged by JetBlue

1 and American in connection with the Northeast Alliance?

2 **A.** I'm -- I'm not sure who engaged them, but I know they
3 worked on the Northeast Alliance.

4 **Q.** As part of the clean team, you worked with members of
5 Compass Lexecon?

6 **A.** Not extensively. I think we had some limited
7 interaction.

8 **Q.** Okay. And are you aware that Compass Lexecon relied on
9 the work of the clean team as part of its analysis of the
10 Northeast Alliance?

11 MR. CRANER: Your Honor, we have an objection on
12 privilege grounds. Compass Lexecon was retained by counsel
13 and did work through the advice of legal counsel from JetBlue
14 and American. This position would be consistent with their
15 depositions. So we have a concern about Mr. Fintzen
16 disclosing those types of privileged communications.

17 MR. CONGDON: Your Honor -- sorry.

18 THE COURT: Go ahead.

19 MR. CONGDON: Your Honor, first of all, the work of
20 the clean team is extensively relied on by Dr. Israel of
21 Compass Lexecon, his expert report in this case is part of
22 his expert testimony.

23 THE COURT: He's your -- defendants' expert?

24 MR. CRANER: Correct.

25 MR. CONGDON: Including discussing work that he did

1 with the clean team and discussing aspects of the clean team
2 did, without any citation to documents or anything, which can
3 only be from his interactions with them. I don't think they
4 can hide that work behind privilege.

5 MR. CRANER: Your Honor, to the extent that this is
6 a discussion for the experts, that issue can be deferred.
7 But for this witness and his communications, which was guided
8 by counsel, we do have a concern about that being privileged.

9 MR. CONGDON: Your Honor --

10 THE COURT: I think it depends on the question.

11 MR. CRANER: Okay.

12 THE COURT: So as to what he's aware of, that
13 doesn't strike me as --

14 MR. CRANER: Understood. We just wanted to
15 preserve that potential objection.

16 MR. CONGDON: Your Honor, to be clear, it's our
17 position that privilege has been waived by work of
18 Dr. Israel, but --

19 THE COURT: I'm, at the moment, deciding the least
20 amount I have to decide, so one question at a time.

21 So overruled as to that question.

22 MR. CRANER: Thank you, Your Honor.

23 Fair enough.

24 BY MR. CONGDON:

25 Q. Mr. Fintzen, are you aware that Compass Lexecon relied on

1 the work of the clean team as part of its analysis on the
2 Northeast Alliance?

3 **A.** On the overall work, correct. I understand that.

4 **Q.** And you're aware that Compass Lexecon submitted that
5 analysis to the Department of Justice as part of its
6 antitrust review of the Northeast Alliance?

7 **A.** I'm aware something was submitted, yes.

8 **Q.** Well, you participated in the presentation to the
9 Department of Justice in its review of the Northeast
10 Alliance, correct?

11 **A.** Components of it.

12 **Q.** And where Compass Lexecon was present during those
13 presentations, correct?

14 **A.** Of the one I recall was walking through the MGIA -- I --
15 I don't know if they were there. They might have.

16 **Q.** Okay. You know Dr. Israel is one of the economists from
17 Compass Lexecon?

18 **A.** Yes.

19 **Q.** And are you aware that in the benefits analysis that he
20 submitted to the Department of Justice, Dr. Israel compared
21 the 2019 base schedule to a joint network schedule using the
22 2023 fleet?

23 **A.** I'm -- I've never seen his analysis.

24 **Q.** Okay. To your knowledge, did Dr. Israel ever submit any
25 analysis comparing the 2019 base schedule with the v4

1 schedule using 2019 fleet constraints?

2 **A.** I don't know what analysis he did.

3 **Q.** Okay. So you don't know if Dr. Israel ever submitted any
4 analysis comparing a base schedule, incorporating JetBlue's
5 2023 standalone growth plans to the joint network scheduling
6 using the 2023 fleet?

7 MR. CRANER: Your Honor, I believe this is asked
8 and answered. The witness says he doesn't know of any
9 analysis.

10 THE COURT: I'll overrule it as to this one, but I
11 think it's sort of the last one --

12 MR. CONGDON: I have no more after this,
13 Your Honor.

14 THE WITNESS: Sorry. Can you repeat the question?

15 BY MR. CONGDON:

16 **Q.** Sure. To your knowledge, did Dr. Israel ever submit any
17 analysis comparing JetBlue's 2023 standalone growth plans to
18 the joint network schedule the clean team created using the
19 2023 fleet?

20 **A.** I have no knowledge of what he was doing.

21 **Q.** Okay. All right. Let's shift topics, Mr. Fintzen.
22 Mr. Fintzen, American and JetBlue coordinate on capacity
23 decisions for routes within the scope of the Northeast
24 Alliance, correct?

25 **A.** There's a -- kind of a protocol or a coordination

1 process, I think is what we defined it as.

2 **Q.** All right. Let's take a look at that process. If we
3 could look at in your binder a document marked PX782.

4 **A.** 782.

5 **Q.** And this has already been admitted into evidence. And
6 this is an e-mail that you sent to Scott Laurence on March 4,
7 2021, correct?

8 **A.** Scott Laurence and others. Correct.

9 **Q.** Okay. And this was just after implementation of the
10 Northeast Alliance began, correct?

11 **A.** Yeah, this would have been -- yeah, this would have
12 been -- would have been around that time, yeah.

13 **Q.** Okay. And you wrote to Mr. Laurence, "Hey Scott, here's
14 what Claire put together for a one-pager for Joanna for her
15 reference." Do you see that?

16 **A.** I do.

17 **Q.** Okay. And "Joanna" refers to Joanna Geraghty, the
18 president and chief operating officer of JetBlue?

19 **A.** Yes.

20 **Q.** And if we go to the attachment, it looks like the same
21 document has been attached twice, once as a PowerPoint and
22 one as a PDF. I like the third page which is colored and you
23 can choose. And you see the slide is titled "NEA Capacity
24 Coordination Process"?

25 **A.** Yes.

1 Q. Okay. And this chart on the right summarizes the
2 capacity coordination process under the Northeast Alliance,
3 correct?

4 A. Yeah, it gives Joanna a sense of how the teams were
5 working.

6 Q. Let's look at step number 3.

7 A. Okay.

8 Q. It says, "Network reps convene on proposals to determine
9 consensus." Do you see that?

10 A. Sure.

11 Q. And "network reps" refers to network planning
12 representatives from American and JetBlue?

13 A. Yeah, network planning or schedule planning.

14 Q. Okay. And that's the process in place today, correct,
15 that network reps from American and JetBlue convene to
16 determine consensus?

17 A. Yeah, they sit sort of, from time to time, as necessary,
18 to publish schedules, correct.

19 Q. Now, prior to Northeast Alliance, JetBlue's network
20 planning team didn't seek consensus with any other airline on
21 their proposals, correct?

22 A. There wasn't -- there wasn't a process like this in
23 place, no.

24 Q. Okay. And you see the fourth step in the process? It
25 says "plans, including unresolved" --

1 **A.** Number four? Yeah.

2 **Q.** Yeah. "Plans, including unresolved differences,
3 presented to senior planning team." Do you see that?

4 **A.** I do.

5 **Q.** Okay. And you were deposed in this case on May 4, 2022,
6 correct?

7 **A.** Sounds right.

8 **Q.** And as of that date, you couldn't identify a single
9 instance where American and JetBlue had to even invoke the
10 process on resolving unresolved differences as laid out here,
11 correct?

12 **A.** Well, the process -- just to be clear, the process laid
13 out here is reading out the plans and sort of the direction,
14 after we've -- in the process -- in step number 1, we're sort
15 of setting a high level vision of the strategy. The teams
16 are then working through. They're sort of reading out in
17 sort of corporate jargon where the plan's at.

18 So the working teams are making those -- are doing
19 that work. Each team would very, very clearly steer them.
20 Each team is independent, maybe has final decision authority
21 about what they want to do. And then the step number 4 is
22 really about how are we going to keep track, some progress of
23 how they're broadly tracking.

24 So this wasn't -- you know, that -- unresolved
25 differences, that's really the working team's working amongst

1 themselves and even getting to the point where I suppose they
2 could agree to disagree. That's the process that's
3 established.

4 **Q.** Okay. If we can take a look at your deposition, it's the
5 second tab in your binder.

6 **A.** Sure.

7 **Q.** And this is your May 4, 2022, deposition.

8 **A.** Second tab. So -- depo?

9 **Q.** Depo, correct.

10 THE COURT: What page?

11 MR. CONGDON: Page 147 of the deposition.

12 I'm sorry, let's go to 146, please.

13 THE WITNESS: Sorry 146?

14 BY MR. CONGDON:

15 **Q.** Yeah, apologies. Starting on lines 22.

16 And you were asked, "So you can't think of an
17 instance where American and JetBlue's network reps were not
18 able to determine consensus on proposed schedules?"

19 And you said, "I can't remember an instance where
20 we sort of invoked the sort of -- this governance process and
21 said this is a -- you know, we talk about plans, including
22 unresolved differences. And those unresolved differences
23 were sort of escalated in that process. I can't really
24 remember anything like that."

25 Do you see that? Did I read that correctly?

1 **A.** I'm sorry. I lost where you were. Sorry.

2 THE COURT: 146.

3 THE WITNESS: 146.

4 THE COURT: Very bottom of the page, line 22. See
5 the line numbers?

6 THE WITNESS: Okay. Yes. Thank you.

7 THE COURT: From there to 147, line 7. And his
8 first question is did he read it correctly.

9 THE WITNESS: Thank you. Okay. I see where you
10 are now. Thank you.

11 BY MR. CONGDON:

12 **Q.** And did I read that correctly?

13 **A.** Yes.

14 MR. CONGDON: Okay. Your Honor, I move to admit
15 page 146, the May 4, 2022, deposition, beginning at line 22,
16 through page 147, line 7, as a party admission.

17 MR. CRANER: Your Honor, we have no objection to
18 admitting the transcript, that portion. We don't believe
19 there's any inconsistency, but we have no objection.

20 THE COURT: Fine. Admitted.

21 (Plaintiffs' Exhibit Deposition of David Fintzen,
22 May 4, 2022, page 146, line 22, through page 147,
23 line 7, admitted into evidence.)

24 BY MR. CONGDON:

25 **Q.** Mr. Fintzen, I would like to switch to another topic.

1 And we'll be hopefully brief on this. I know the Court has
2 heard about it.

3 Mr. Fintzen, the Mutual Growth Incentive Agreement,
4 the MGIA, became effective on April 1, 2021, correct?

5 **A.** Correct.

6 **Q.** And you were involved in negotiating the MGIA, correct?

7 **A.** Yeah. As part of the team that did that, correct.

8 **Q.** And the MGIA was negotiated while COVID was going on,
9 correct?

10 **A.** Correct.

11 **Q.** Okay. And as you earlier testified, the clean team was
12 assuming a steady state might return around 2023?

13 **A.** Clean team needed to do their best to separate COVID to
14 making any long-term strategic decision; so similar, you had
15 to do the same in the MGIA.

16 **Q.** And that assumed -- you assumed demand would return to
17 something like 2019 levels around -- by 2023, correct?

18 **A.** For the purposes of developing and thinking through a
19 network, for the purposes of the MGIA, you actually wanted to
20 think much longer term than that.

21 **Q.** Okay. Well, just for purposes of developing a network,
22 you were thinking demand might return to 2019 levels around
23 2023, right?

24 **A.** I mean, nobody had anything close to a crystal ball.
25 Like, you had to take a -- just put your finger in the wind.

1 **Q.** Sure. The MGIA didn't incorporate any sort of adjustment
2 in the first couple of years to account for that, correct?

3 **A.** No specific adjustment, no.

4 **Q.** Okay. Now, there came a time later in 2021, when you
5 learned that JetBlue would owe a fairly significant amount in
6 incentive payments to American under the MGIA, correct?

7 **A.** Yeah. As we launched the MGIA and started to implement
8 the MGIA, it was in the midst of still a pretty extreme
9 environment from COVID.

10 **Q.** And that amount, by the end of 2021, was in the hundreds
11 of millions, correct?

12 **A.** Correct.

13 **Q.** I think in your deposition you estimated somewhere in the
14 lower 200 millions. Does that sound right?

15 **A.** Yeah, that sounds right.

16 **Q.** That sounds right that that's what the amount was,
17 correct?

18 **A.** Correct.

19 **Q.** Now, ultimately, as we know, JetBlue and American came to
20 an agreement over how much transfer payment JetBlue actually
21 paid to American, correct?

22 **A.** Correct.

23 **Q.** Okay. Let's go ahead and look at that agreement, if we
24 could. And --

25 THE COURT: One question about the transfer

1 payments. Are they trued up once a year?

2 THE WITNESS: It's --

3 THE COURT: Is it a once-a-year accounting and then
4 somebody pay somebody the transfer payment, or is it done --
5 is it -- are the payments made more every month or every week
6 or every quarter?

7 THE WITNESS: Every quarter, sort of a very
8 preliminary process. The true, sort of, true-up and audit
9 process to sort of determine that sort of number for the
10 year, that's done after the end of that calendar year.

11 THE COURT: But in terms of cash going one way or
12 the other way, it doesn't happen until the end of the year?

13 THE WITNESS: And there's a mechanism where you can
14 either make estimates or you might -- you might have some
15 cash if you feel comfortable with the estimates along the
16 way, but it's really built around what's kind of that full
17 year number.

18 THE COURT: Okay. Go ahead.

19 BY MR. CONGDON:

20 **Q.** Okay. We're just going to pull up a document marked
21 DX437. And this is a defense exhibit that's in evidence.
22 Probably in the back of the binder. We put the defense
23 exhibits back there, but it's also on the screen if that's
24 easier, Mr. Fintzen.

25 **A.** Thank you.

1 Q. And, now, Mr. Fintzen, this is a letter to you dated
2 January 6, 2022, correct?

3 A. Correct.

4 Q. Okay. And it's sent and signed by Mr. Anmol Bhargava at
5 American?

6 A. Correct.

7 Q. And you're familiar with Mr. Bhargava, correct?

8 A. I am.

9 Q. He's sort of your counterpart at American with respect to
10 the Northeast Alliance?

11 A. Correct.

12 Q. And on the second page, that's your signature, correct?

13 A. Correct.

14 Q. It says "acknowledged and agreed," and has your name and
15 signature?

16 A. Correct.

17 Q. And if we just go to the first big paragraph in the
18 letter, it reads, starting sort of at the end of the second
19 sentence, "Given the variability and the currently available
20 data and the continued effects of COVID-19 on revenue
21 performance, which led to unexpected outputs from the MGIA
22 model, the parties have mutually agreed to cap the periodic
23 mutual growth incentive payments and the final mutual growth
24 incentive payments (collectively, the MGIPs) at \$27 million
25 for the twelve months ending March 31, 2022," correct?

1 **A.** Correct.

2 **Q.** And this reflects that American and JetBlue agreed that
3 JetBlue would pay American no more than \$27 million for the
4 12 months ending March 31, 2022, correct?

5 **A.** Correct.

6 **Q.** And this letter refers to unexpected outputs from the
7 MGIA model. Do you see that?

8 **A.** Yes, I do.

9 **Q.** And is that what we were talking about before that led to
10 the hundreds of millions of dollars?

11 **A.** That was the extreme operating environment from COVID
12 that we were still living in, you see referenced in the
13 sentence before.

14 **Q.** Yeah, exactly. Those unexpected outputs, it wasn't error
15 in data entry or something, was it?

16 **A.** That we're referencing here? No.

17 **Q.** Okay. It reflected actual flying that took place in
18 2021, correct?

19 **A.** Correct.

20 **Q.** And going forward, you didn't change the MGIA model in
21 any way, correct?

22 **A.** The -- the mathematical equations?

23 **Q.** Correct.

24 **A.** No.

25 **Q.** In fact, it says that in the third paragraph of this

1 letter, right, that you weren't going to change the MGIA
2 model in any way?

3 **A.** The math, no.

4 **Q.** Okay. American and JetBlue simply agreed that the actual
5 flying that took place between April 1, 2021, and March 31,
6 2022, was not reflective of the spirit of the MGIA, correct?

7 **A.** Correct.

8 MR. CONGDON: Thank you, Your Honor. No further
9 questions. I pass the witness.

10 THE COURT: All right. Cross-examination.

11 MR. CRANER: Thank you. Just one sec to get set
12 up.

13 THE COURT: Sure.

14 MR. CRANER: I'll hand out a binder to Your Honor
15 and the witness.

16 THE COURT: Sure.

17 Before you get started, I just have a question, a
18 further question on DX437. The one you were just --

19 THE WITNESS: The one we were just looking at?

20 THE COURT: Yeah.

21 THE WITNESS: That was 437?

22 THE COURT: 437, exactly.

23 THE WITNESS: Sure.

24 THE COURT: So the sentence that counsel asked you
25 about capped the -- thank you -- capped the transfer payment

1 for the period March -- ending -- for the year ending
2 March 31, 2022, at 27 million. Right? That's the sentence
3 you just discussed with him.

4 THE WITNESS: Yes.

5 THE COURT: The next sentence says, "The parties
6 mutually agree to cap for the nine months ending December 31,
7 2021, at 20 million." So that's a subset period of the prior
8 period.

9 THE WITNESS: Yes, correct.

10 THE COURT: Is that -- just explain that to me.

11 THE WITNESS: Because you -- as you're accruing or
12 sort of recognizing the revenue liability, or the contra
13 revenue, technically, it does happen on a quarterly basis.
14 So that meant, of the 27, 20 million would be booked in the
15 fourth quarter and 7 million would be booked in the first
16 quarter. So it was really just to help our revenue
17 accounting team kind of know how to -- where to put the 27
18 million kind of in our overall financial statement.

19 THE COURT: I see. Okay. It didn't have other
20 significance in terms of, like, if the loss were bigger, if
21 the transfers were bigger during the first nine months capped
22 at 20 million, but in the -- that other quarter, it was less
23 than 7 million, you could end up paying less than 27 million?

24 THE WITNESS: It could have. It could have had --
25 you know, because we were sitting in January, so you wouldn't

1 have had --

2 THE COURT: Wouldn't know.

3 THE WITNESS: -- full visibility into the first
4 quarter.

5 THE COURT: Right.

6 THE WITNESS: So it could have, but I think --

7 THE COURT: It was more an accounting --

8 THE WITNESS: It was more of an accounting thing
9 and less about --

10 THE COURT: Whether those --

11 THE WITNESS: -- getting that precise with that
12 sort of exact allocation.

13 THE COURT: I see. Okay.

14 Give me one other minute.

15 Oh, I see. In any event, you accounted for that in
16 the next sentence, or next clause, with a proportional
17 increase in the 20 million if it were less than 7?

18 THE WITNESS: Yeah.

19 THE COURT: Okay. Got it. Thank you.

20 MR. CRANER: May I proceed, Your Honor?

21 THE COURT: Yes.

22 MR. CRANER: Thank you.

23 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT JETBLUE**

24 BY MR. CRANER:

25 **Q.** Good morning, Mr. Fintzen.

1 **A.** Good morning.

2 **Q.** Mr. Congdon asked you some background questions. I just
3 have a few follow-up background questions. In your role as
4 the vice president of the Northeast Alliance, can you tell us
5 what your job responsibilities are?

6 **A.** Sure. So I really -- I oversee the implementation of the
7 Northeast Alliance. So it's really a cross-functional role,
8 working with teams throughout JetBlue. I'm really to deliver
9 what we call the seamless customer experience for our
10 customers within the NEA.

11 **Q.** And can you describe for the Court the different groups
12 and teams at JetBlue that you work with in implementing the
13 NEA?

14 **A.** Sure we rely -- we add work to a whole number of teams
15 throughout the company, and then work with them. So kind of
16 working through the different teams. In the commercial area,
17 work extensively with our partnerships team. We work with
18 our network planning team. We work with our corporate sales
19 team, our marketing and our brand team, our loyalty team --
20 that's our frequent flyer program.

21 We spend a lot of time with our IT team. They play
22 a really important role in implementation. In the finance
23 side, revenue accounting, which we just kind of touched on,
24 financial planning analysis, which I mentioned before.

25 Then in the operation, it's a number of different

1 teams. It's -- where we need to -- our flight operations, so
2 kind of the people who sort of train and manage our pilots.
3 The airport, spend a lot of time with our airport teams. Our
4 systems operation control are managing the operation,
5 day-to-day handling customers that may get disrupted.
6 Customer support, which is our reservation agents.

7 There's probably more I'm forgetting, but it's a --
8 it's a highly cross-functional sort of matrixed role to sort
9 of bring all of this work together to ensure that all of
10 these teams, which have very busy, very challenging day jobs,
11 are coordinated in a way that we can actually deliver these
12 customer benefits and make it easy for a customer to buy a
13 codeshare flight and get on an American plane if they're not
14 on a JetBlue plane.

15 **Q.** Can you give some examples who you and your team help
16 with implementation process across those different teams?

17 **A.** Just an example of the work we're doing?

18 **Q.** Just an example for the Court.

19 **A.** So with our IT team, we have a whole number of projects
20 we've worked with them to develop in terms of changes to our
21 information technology that help expand and improve the
22 seamlessness of the product. So it can be working with the
23 team that manages the website and how we can sell codeshare.
24 To make that really obvious to a customer, what exactly
25 they're buying, versus JetBlue -- we're really proud of the

1 experience you get on JetBlue, we want to make it clear on
2 American, what you're getting. So that's the part of the IT
3 team.

4 There's a lot of technology you have to work with,
5 with Sabre, which is our -- which is a business partner, to
6 make sure that the technology works so that a customer, when
7 they check in, they get a confirmation code; they put it in a
8 system, that it will work. So there's a lot of effort that
9 has to go to coordinate and sort of make sure all of that
10 works in a way that customers -- and this is a multiyear
11 effort -- don't have to think about it, and it just kind of
12 naturally -- it's a very natural sort of process, to move
13 from, you know, buying a JetBlue flight to buying a codeshare
14 flight and walking onto an American airplane.

15 **Q.** And as part of your work helping to implement the NEA, do
16 you interact with the American team?

17 **A.** We do.

18 **Q.** And can you describe the scope of that interaction?

19 **A.** Yeah. The lion share, the mass majority of your time is
20 with their team that similarly is developing their parts of
21 the customer -- the seamless customer experience.

22 **Q.** And is there an expected time frame to complete the NEA's
23 implementation?

24 **A.** In 2021, we sort of laid out our road map. It was about
25 a three-year plan that we're working through. 19 months made

1 a lot of progress on that plan. So that's kind of the way we
2 thought about it.

3 That said, it's not like we hit that first three
4 years, and we're done. There's always going to be things
5 that we're going to be looking at to make better, but that
6 first three years is where we want to get the experience to
7 sort of where it can work in the market and will work in the
8 market.

9 **Q.** Can you approximate how much of the NEA has been
10 implemented at this point?

11 **A.** I would say, as we're tracking to the end of this year --
12 it's always hard to measure this precisely, but probably --
13 certainly majority, maybe 80 percent.

14 **Q.** Okay. Thank you.

15 Just want to move on to cover a couple of topics
16 that Mr. Congdon raised with you. First, starting with the
17 MGIA, Mr. Congdon asked you a question about potential
18 adjustments being in the agreement. Is there an opportunity
19 in the agreement to make any adjustments relating to the --
20 the MGIA base period?

21 **A.** Yes, there are.

22 **Q.** And can you please explain that to the Court?

23 **A.** Yeah. One of the challenges in negotiating the MGIA was
24 future-proofing for COVID. And the way we thought about that
25 and approached that was you had -- you need to bring the base

1 period, that base period you set, into the post-COVID world.

2 So rather than trying to -- rather than try to
3 believe we could properly guess how to do that in spring of
4 2020, we actually set trigger points, one of which was set on
5 time, which was December 2020. We were too optimistic about
6 timing. But the second was set on an event. And that's the
7 one we always thought would be more useful.

8 That event was industry -- domestic industry
9 revenue recovering to 2019 levels. And so that's the kind
10 of -- the mechanism we approached to review and adjust --
11 review and, you know, enter into commercial negotiation on
12 the base period.

13 **Q.** Okay. And sticking with the MGIA transfer payment, has
14 that transfer payment impacted JetBlue's implementation of
15 the NEA in any way?

16 **A.** No.

17 **Q.** And has anyone told you that JetBlue plans to change its
18 business strategy because of the transfer payments in the
19 NEA?

20 **A.** No.

21 **Q.** Thank you. I just want to move on. Mr. Congdon showed
22 you a document and asked you a question about the concept of
23 metal neutrality. Do you remember that?

24 **A.** Yes.

25 **Q.** Okay. You don't need to look at the document.

1 **A.** Okay.

2 **Q.** To be clear, do you believe that the MGIA makes JetBlue
3 metal neutral?

4 **A.** No.

5 **Q.** And can you explain why you believe that?

6 **A.** We -- we absolutely want and need customers on JetBlue
7 planes experiencing JetBlue.

8 **Q.** And why is that?

9 **A.** Two reasons, among others, but first, if you think about
10 it, JetBlue is a -- we're a little bit of a different animal
11 in the industry. We have a different value proposition. We
12 can market that. We can advertise that, but if customers
13 don't know us, the best way for them to understand and learn
14 what we are is to get on the airplane to see why it's
15 different. It's fun to see when that happens and I've seen
16 it.

17 So trial is what we call that, but there's a second
18 reason, and as you -- you know, what you want to do is you
19 want to grow your customer base, kind of your ecosystem, as
20 you might call it. And that goes beyond just an individual
21 flight. That's ensuring we grow our customers. We bring
22 them to our website. They're joining our loyalty program.
23 They're getting our co-brand credit card.

24 We've made an enormous amount of initiatives around
25 what we call JetBlue travel products, so selling a hotel, a

1 car, trip insurance. So all of that -- all of that is really
2 important to sort of JetBlue's growth and JetBlue's strategy
3 in the industry. So, no, we're -- we want customers to sort
4 of experience and live in that ecosystem.

5 **Q.** Thank you.

6 And when the term "metal neutral" was used in the
7 capacity of the clean team, what did you understand that to
8 mean?

9 **A.** I can speak to kind of how I was thinking about it,
10 because we were trying to get at the network sort of
11 relevance benefits that the NEA would bring, that ability to
12 grow the JetBlue customer base. It's that notion of
13 seamlessness, there would -- that same customer to realize
14 the value of the network would need to be also flying,
15 arguably, through codeshare on an American Airlines plane.

16 So if you don't have that sense of seamlessness,
17 you can't really -- you can't really deliver the benefit to
18 the customer of this broader, deeper, bigger network that is
19 something that many customers really need and want.

20 **Q.** Okay. And we'll cover seamlessness in a bit.

21 You were asked some questions about putting
22 together a proposed joint network plan. I think you
23 described it as being directionally useful and not a final
24 plan. Can you just describe in your own words what the
25 purpose of that exercise was?

1 **A.** Yeah, it was -- you can call it sort of due diligence or
2 directional. The starting point for the clean team and the
3 work was kind of a thumbnail sketch of what Project Connie
4 could look like. The network itself is, obviously, a key
5 component. That's what helps us compete with United and
6 Delta more and more effectively. So we needed to do enough
7 work to kind of see the opportunity and the growth
8 opportunity, the customer benefits. But we didn't need it to
9 be so precise and so granular. That's implementation work.

10 So that -- you know, it wasn't clear we would
11 proceed with Project Connie at that point -- that would turn
12 then to the implementation work. So we just need to get kind
13 of close enough or, directionally close enough to make a
14 business decision.

15 **Q.** Okay. Thank you.

16 And you mentioned the concept of seamlessness and
17 that's been --

18 THE COURT: I'm sorry, before you jump to
19 seamlessness, one more question about metal neutrality. So
20 on the one hand, I understand what you're saying is you want
21 customers on JetBlue planes because then they get the JetBlue
22 experience, right? That's one reason. Isn't it?

23 THE WITNESS: Yeah, absolutely.

24 THE COURT: Then that's more likely -- the theory
25 is that the experience is positive and so that will cause

1 them to, like, decide they prefer JetBlue credit card over
2 any other credit card, be it an American credit card or an
3 American Express or whatever else.

4 THE WITNESS: Exactly.

5 THE COURT: And then with the credit card,
6 there's -- that's revenue for JetBlue. And then they might
7 do travel plans, and they might go to your website and your
8 loyalty program, and all those other things generate
9 potential revenue and profitability.

10 THE WITNESS: Yes.

11 THE COURT: And so that's why you want them in your
12 ecosystem, and the benefit, then, of the network is -- the
13 benefit of the NEA is bigger network, more likely to draw
14 people, right?

15 THE WITNESS: Absolutely.

16 THE COURT: So then the flip side, though, is that,
17 in terms of constructing the schedule, it's metal neutral in
18 the sense that you're trying to create the -- trying to pool
19 the two sets of -- in the areas that you're coordinating,
20 trying to pull pool the two sets of metal to get the best
21 network, right?

22 THE WITNESS: Yeah, absolutely.

23 THE COURT: And -- and so in that sense, it might
24 be better for the network to put this JetBlue plane on XYZ
25 route because, overall, that leads to the best network

1 outcome, right?

2 THE WITNESS: Yeah, or there may be routes that
3 just wouldn't really fit JetBlue, but we know some -- that
4 sort of that relevance, that network relevance, you want to
5 have that route sort of in the broader portfolio. So having
6 access to -- if it requires a different fleet type, a --
7 Athens or Tel Aviv, you know, these are, you know, 5,000 mile
8 routes that are important routes. We don't have a fleet that
9 could actually do that.

10 So there's going to be those examples where you can
11 kind of better use of the slots by having these two different
12 business models with strengths and weaknesses.

13 THE COURT: Sure. But the routes, say, that you
14 wouldn't ordinarily fly or would be less important but
15 there's a value and a network relevance, it may be that you
16 put a JetBlue plane on that flight, on that route? Depending
17 on how the network schedule works out, because the network
18 people are trying to optimize it with metal neutrality in
19 mind?

20 THE WITNESS: Yeah, you may -- they would be --
21 that's the work. We're in the implementation. They are kind
22 of going through, how does that turn into which slot, which
23 aircraft, right? That's how you practically get to a
24 schedule where you can sort of have that agreement and maybe
25 you don't always agree on -- you certainly don't agree on

1 everything. Then they have to make those sort of -- they
2 would make those decisions.

3 THE COURT: But there's a way in which you would --
4 in a perfect world, you would prefer all JetBlue planes to be
5 on sort of, for lack of a better term, the best routes or --
6 or routes that would draw -- routes -- best in the sense it
7 would draw in the most -- serve your existing base and draw
8 in the most new people to your ecosystem?

9 THE WITNESS: I think there's some things that
10 JetBlue does really well or we would -- that would be natural
11 to us. I think the challenge, though, is there's a --
12 there's a set of customers that just kind of show up every
13 five years and just kind of buy a schedule or a price.
14 There's a subset of customers that are really buying a
15 network.

16 And so you want to make sure, through sort of
17 JetBlue or access to American, you're sort of presenting them
18 that network so that they can kind of come in and join that
19 loyalty program and be a part of that. So you're kind of
20 looking at different types of customers in making those
21 decisions.

22 THE COURT: Right. I guess my question is, is
23 there any tension between maximizing network relevance and
24 maximizing people in your ecosystem?

25 THE WITNESS: Well, the tension would be that

1 you -- you have to really be involved as JetBlue and be out
2 sort of growing JetBlue and investing from a JetBlue
3 standpoint to sort of realize the full benefit for JetBlue
4 customers.

5 THE COURT: All right. Go ahead.

6 MR. CRANER: Thank you, Your Honor.

7 BY MR. CRANER:

8 **Q.** And up on that point, does the NEA in any way change the
9 fact that JetBlue has discretion over the flights and routes
10 that it flies?

11 **A.** No.

12 **Q.** And does it -- does it change in any way the overall
13 business strategy?

14 **A.** Oh, no.

15 **Q.** Thank you. I did want to turn to the issue of
16 seamlessness, which you described earlier.

17 MR. CONGDON: Your Honor, I'd just like to object
18 to the line of questioning. It's outside the scope of my
19 direct. Mr. Fintzen is not on defendants' witness list and
20 therefore, their cross has to be limited. I don't think I
21 asked him any questions about seamlessness. Obviously, I'm
22 fine with all the background, but I just want to put an
23 objection of outside the scope of my exam.

24 MR. CRANER: Your Honor, the witness testified what
25 his job responsibilities are, and we've had the discussion of

1 seamlessness, so I do think it's within scope.

2 MR. CONGDON: He testified to that under
3 Mr. Crane's questioning.

4 THE COURT: That's true. He did testify about
5 that -- his job responsibilities in your questioning. I
6 think some amount of seamlessness is within the scope of the
7 direct. How far you can go, given the objection -- it's a
8 fair objection given the limitations, but at least for the
9 moment, you can ask.

10 MR. CRANER: Thank you, Your Honor. I will be
11 short.

12 BY MR. CRANER:

13 **Q.** What does seamless customer experience mean in the
14 context of the NEA?

15 **A.** Yeah, so what it means in the context of the NEA is that
16 we have a -- kind of a framework we use at JetBlue called the
17 travel ribbon, so it maps out kind of from when you're
18 shopping to managing your reservation, getting on the
19 airplane, moving through an airport, all the things that
20 happen after the flight.

21 The concept of seamlessness is systemically looking
22 through that travel ribbon with an eye towards the NEA and
23 making it convenient and easy for a customer to move through
24 that travel ribbon. So in that sense, seamlessness is a lot
25 of somewhat little things, some occasionally a big thing,

1 that sort of add up to making sure that the customer doesn't
2 have to really sit and think how do I -- how do I get on a
3 codeshare flight.

4 **Q.** And can you give a couple of examples how that might
5 work?

6 **A.** Sure, so a few -- through that travel ribbon shopping, I
7 think I mentioned that earlier. You want to make sure that
8 you set the right expectation, that the customer knows what
9 they're buying when they're getting a JetBlue experience and
10 when they're buying American through codeshare.

11 So there's been a lot of work on the website, more
12 to come, to make that sort of merchandising clear that's in
13 our IT team.

14 Customer communication has been a huge area of
15 focus. So I mentioned that sort of needing two different
16 confirmation codes. It's really thinking about how do we
17 communicate with the customer working with our market team,
18 our brand team, things like confirmation e-mails, directing
19 you to the right system so that you know where to go.

20 In the airport, this gets a little bit away from
21 IT, I suppose. Let's say you have a connecting customer who
22 is flying into JFK. They need to move from T5 to T8. It's
23 investing in and having a bus that will move between the
24 terminals, behind security, so you don't have to come out of
25 security, go on the train, and come back.

1 In many of these airports, it's something as simple
2 as, if you're connecting and showing up, making sure the bag
3 you checked moves from airplane A to airplane B and you never
4 have a customer have to worry about it.

5 And then in the reciprocal loyalty benefits, on the
6 airplane, the last piece -- and in a way, it's IT, but it's
7 our customer insights team. We do an enormous amount of
8 customer surveying work. NPS is the metric we use.

9 We've actually evolved and improved that survey, so
10 we're actually getting that customer feedback and scoring in
11 what we call verbatims and comments so we can then come back
12 and kick the tires on the plan and constantly improve what
13 we're doing to deliver a seamless customer experience.

14 MR. CRANER: Thank you, Mr. Fintzen.

15 Your Honor, I have no further questions for now. I
16 pass the witness.

17 THE COURT: Okay.

18 Anything else?

19 MR. CONGDON: Yes. Do you mind if I take the mask
20 off?

21 THE COURT: No, go ahead.

22 MR. CONGDON: Just a few questions, Mr. Fintzen.

23 THE COURT: The problem is Mr. Jones and the person
24 sitting next to you is thinking more about the being unmasked
25 than me. And I'm fine with you staying there. I'm just

1 kidding.

2 MR. CONGDON: No, I know, but I'll actually use the
3 podium anyway.

4 THE COURT: All right.

5 **REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS**

6 BY MR. CONGDON:

7 **Q.** Mr. Fintzen, I just wanted to pick up on that last point
8 real quickly. You mentioned customer surveys. Did I hear
9 that right?

10 **A.** Correct.

11 **Q.** Okay. So when you want to know what your customers want,
12 you ask them?

13 **A.** Yes.

14 **Q.** And you do that through a survey?

15 **A.** Among other ways, yes.

16 **Q.** Mr. Fintzen, you just discussed a couple of moments ago
17 with Mr. Craner the idea that JetBlue wants to keep its
18 customers within its loyalty program, correct?

19 **A.** Correct.

20 **Q.** That's important for JetBlue?

21 **A.** Absolutely.

22 **Q.** During the evaluation of the Northeast Alliance, you and
23 folks within JetBlue expressed concern that the Northeast
24 Alliance might actually negatively impact JetBlue's loyalty
25 program, correct?

1 **A.** During that -- during that period, our job was to
2 identify risks and think about what they are, often put some
3 sizing around it, and then think about how do you manage,
4 mitigate, or get comfortable with that risk.

5 **Q.** And one of the risks was that if you have reciprocal
6 frequent flyer benefits with American, some customers might
7 simply choose to only enroll in American's loyalty program,
8 not JetBlue's, because they can still redeem their miles on
9 JetBlue flights, correct?

10 **A.** I believe that was one of the risks we identified.

11 **Q.** Okay. Can you take a look at PX819? I believe it's in
12 your binder.

13 **A.** All right.

14 MR. CONGDON: And I believe this is in evidence,
15 Your Honor. We can go ahead and publish it.

16 THE COURT: Okay.

17 BY MR. CONGDON:

18 **Q.** Are you there, Mr. Fintzen?

19 **A.** Yep.

20 **Q.** And okay. And you see this is an e-mail from someone
21 named Don Uselmann on October 1, 2020.

22 **A.** Yes.

23 **Q.** And who is Mr. Uselmann?

24 **A.** At this point, he was the vice president of loyalty.

25 **Q.** And he was sending it to Joanna Geraghty, Jane O'Brien,

1 Scott Laurence, yourself, and some others at JetBlue?

2 **A.** Correct. A number of folks at JetBlue.

3 **Q.** Okay. And the subject is "Connie loyalty update"? Do
4 you see that?

5 **A.** Yes.

6 **Q.** Okay. And he writes "All consistent with the Connie
7 governance process, I have attached the materials for today's
8 discussion"?

9 **A.** Correct.

10 **Q.** Fair to say that you were having a discussion about
11 loyalty under the Northeast Alliance on this day?

12 **A.** Yeah.

13 **Q.** If you turn to slide 9 of the attachment --

14 **A.** Slide -- slide 9.

15 **Q.** -- it's very small on the right-hand corner, it's got a
16 little graph with an orange, green, and blue line. Do you
17 see that?

18 **A.** You're talking about the text to the right, or the box
19 underneath?

20 **Q.** The slide 9 has got the title: "Through road map
21 prioritization and redemption subsidies, we can mitigate the
22 risk until TrueBlue value profit matures." Do you see that?

23 **A.** Yes.

24 **Q.** And the risk referred to here is the risk we were just
25 discussing about the risk to JetBlue's loyalty program from

1 entering the Northeast Alliance?

2 **A.** Yeah.

3 **Q.** Okay. And if you look at the graph, do you see there's
4 an orange line, a green line, and -- I'm going to guess gray?

5 **A.** I think it's blue.

6 **Q.** We'll go with blue. Your eyes might be better than mine.
7 And do you see the orange line is the highest in terms of
8 annual revenue?

9 **A.** Correct.

10 **Q.** Okay. And that says "planned trajectory," correct?

11 **A.** Correct.

12 **Q.** And it says, "absent AA/FFP deal, existing 20 percent
13 growth rate." Do you see that?

14 **A.** Yep.

15 **Q.** And then the blue line, at the bottom, is the lowest,
16 correct?

17 **A.** Correct.

18 **Q.** And that says "no mitigation"?

19 **A.** Correct.

20 **Q.** And that says, "current AA/FFP deal without mitigation,"
21 correct?

22 **A.** Correct.

23 **Q.** And then the green line, in the middle, is titled
24 "mitigation plan," right?

25 **A.** Correct.

1 **Q.** And that's current AA/FFP deal with road map
2 prioritization and redemption subsidization?

3 **A.** Correct.

4 **Q.** And that was the plan that Mr. Uselmann and the loyalty
5 team were recommending JetBlue go down in that meeting?

6 **A.** That was the iteration of that plan at that point,
7 correct.

8 **Q.** Okay. And that shows less growth than the trajectory,
9 absent the AA/FFP deal, correct?

10 **A.** That's what the chart for loyalty shows it says.

11 **Q.** If we could now go back to PX751, if we can go to the
12 second page, and pull up the language on Number 4 and
13 Number 1 -- actually, something of a subset?

14 **A.** Okay.

15 **Q.** Actually, I'm sorry; let's go back -- it's actually under
16 Number 5. I'm sorry.

17 **A.** That's later, right? Yeah.

18 **Q.** So you remember you were asked some questions about what
19 "metal neutral" meant in the context of this document?

20 **A.** Sure.

21 **Q.** Okay. And when you wrote here what is intended to be a
22 metal neutral JV, you followed that by saying, "We need to
23 have route level forecasts to ensure we get the RSA right."
24 Do you see that?

25 **A.** I do.

1 **Q.** So when you were talking about metal neutral in this
2 context, you were talking about the economics of the revenue
3 share agreement, not customer seamlessness, correct?

4 **A.** Well, relevance from a network perspective, which is
5 what's driving the -- in the parlance of the NEA, net
6 incremental revenue, is a by-product of seamlessness.
7 They -- one can't exist without the other.

8 **Q.** Okay. But here, you were talking about the revenue
9 sharing agreement, correct?

10 **A.** Right, the MGIA.

11 **Q.** Okay. And then now, if we go back to, on Number 4 and
12 Number 1, please, and this time, if you go down to the third
13 paragraph --

14 **A.** The -- "on Number 1"?

15 **Q.** Yeah, the third paragraph under the Heading Number 4 and
16 Number 1 -- yeah, starting on "Number 1," exactly. And
17 there, again, you're talking about potential alternatives and
18 how to schedule the shuttle routes, correct?

19 **A.** Looks like it.

20 **Q.** And in your second sentence, you write, "Let's all kick
21 the tires, though, and see what is best overall JV solution,
22 as that is what drives the economics."

23 Correct?

24 **A.** Best overall JV solution, as that is what drives the
25 economics.

1 Q. All right. And by "best overall JV solution" there,
2 you're talking about what's best for the Northeast Alliance
3 as a whole, correct?

4 A. Well, it's kind of getting to that -- that other question
5 around what puts the best network in front of customers so
6 that we can compete against United and Delta.

7 Q. The best joint network between JetBlue and American
8 combined, correct?

9 A. Right. Well, and our customer base can access.

10 Q. And that's what drives the economics?

11 A. Yes, because that's what -- that's what allow us to grow
12 and allows us to grow our customer base and drive incremental
13 margin.

14 MR. CONGDON: No further questions, Your Honor.

15 MR. CRANER: Your Honor, I have very briefly just
16 on the topic of the frequent fliers that was just raised.

17 THE COURT: Sure.

18 **RECROSS-EXAMINATION BY COUNSEL FOR DEFENDANT JETBLUE**

19 BY MR. CRANER:

20 Q. Mr. Fintzen, Mr. Congdon showed you two documents from
21 2020, and I want to talk about how the frequent flyer program
22 is going now. Does JetBlue's TrueBlue program continue to
23 compete with the American Advantage program?

24 A. Yes, it does.

25 Q. And there was some discussion about risks, an analysis of

1 risks. Has the NEA eliminated competitive risks to JetBlue's
2 frequent flyer program?

3 MR. CONGDON: Your Honor, if I could just object.
4 I believe Ms. Swartz [sic] -- I believe we had him as 111 the
5 other time, and I think Mr. Craner is now trying to do what
6 Ms. Swartz was trying to do before.

7 MR. CRANER: This is a subject they did not raise
8 in their direct, so it's a very brief questioning. I can
9 limit it to --

10 THE COURT: I'm sorry. No. You asked the
11 questions. He did his cross. You did your redirect. He's
12 doing his recross.

13 MR. CONGDON: Correct.

14 THE COURT: It's just the second round.

15 MR. CONGDON: Okay.

16 THE COURT: You're objecting to the question or to
17 his -- as to him standing up, we're just to the second round,
18 so he can do that.

19 MR. CONGDON: Okay. That's all right. Your Honor.

20 MR. CRANER: Your Honor, I just have one last
21 question.

22 BY MR. CRANER:

23 **Q.** First of all, has JetBlue mitigated those risks?

24 **A.** I believe so, yes.

25 **Q.** And how so?

1 **A.** A number of different ways. One, we -- we -- I think I
2 mentioned the value proposition. So we've added benefits,
3 something we called Mosaic+, we rolled out not long after
4 that presentation. It adds another set of benefits to some
5 of our most loyal customers. It's particularly things around
6 upgrades into -- into Mint. So that's one example.

7 Another place is sort of -- we've been very
8 diligent and very thoughtful about how we roll out reciprocal
9 benefits and ensuring that -- that an Advantage member may
10 get an benefit on American Airlines. If that benefit is not
11 offered to a TrueBlue member on JetBlue Airlines, that we
12 would never offer that to an Advantage member.

13 So it's kind of making sure that you can't -- one
14 program can't undercut the other to mitigate that risk, so
15 it's kind of an improve the value prop and then make sure you
16 sort of reinforce the value prop.

17 **Q.** And what has been the growth trend for JetBlue's co-brand
18 credit card portfolio?

19 **A.** It's been continuing to grow at a healthy rate.

20 **Q.** Is that a result of the NEA?

21 **A.** I -- I believe so. The growth of the co-brand portfolio
22 inside of the NEA is outpacing the non-NEA geography.

23 MR. CRANER: Thank you. No further questions.

24 THE COURT: All right. Thank you very much.

25 You're excused.

1 MR. JONES: Your Honor, plaintiffs call Jordan Pack
2 of American Airlines.

3 THE COURT: What was the last name?

4 MR. JONES: Pack, P-a-c K. And Jimmy Moore with
5 the Department of Justice will conduct the examination.

6 THE COURT: All right.

7 (Witness duly sworn.)

8 THE DEPUTY CLERK: Can you please state your name
9 for the record?

10 THE WITNESS: Jordan Pack.

11 THE COURT: You can sit down.

12 Go ahead, Mr. Moore.

13 **JORDAN PACK**

14 having been duly sworn, testified as follows:

15 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFFS**

16 BY MR. MOORE:

17 **Q.** Good afternoon, Mr. Pack.

18 **A.** Hello.

19 **Q.** You've been given a binder of exhibits that we may be
20 using during your examination today. You can set it to the
21 side for now and I'll let you know when we need to look at
22 that binder.

23 **A.** Okay.

24 **Q.** You currently work for American Airlines; is that right,
25 Mr. Pack?

1 **A.** Yes.

2 **Q.** And you've worked for American Airlines since you
3 graduated from college in May 2017?

4 **A.** Yes.

5 **Q.** And your current position at American is senior manager
6 for commercial planning and analysis; is that right?

7 **A.** Yes.

8 **Q.** One of your current responsibilities at American is to
9 prepare American's five-year plan; is that right?

10 **A.** To facilitate the five-year plan process, yes.

11 **Q.** And just to be clear, the five-year plan is a goal post
12 for the network planning team at American; is that right?

13 **A.** Yes.

14 **Q.** If you could turn in your binder to PX378.

15 MR. MOORE: And, Your Honor, this exhibit is
16 already in evidence. We'll be publishing a redacted version.

17 BY MR. MOORE:

18 **Q.** Just let me know when you get there, Mr. Pack.

19 THE COURT: It's also on the screen, if you prefer.

20 THE WITNESS: Oh. Okay.

21 BY MR. MOORE:

22 **Q.** And, Mr. Pack, this document contains certain redacted
23 information from your counsel, so the version in your binder
24 is the complete, unredacted version, the original, and then
25 the one you see on the screen is going to have redactions.

1 So I just ask that you not read the information that's
2 blacked out on the screen.

3 **A.** Okay.

4 **Q.** Mr. Pack, this is a November 15, 2021, e-mail from
5 yourself with the subject line "Monthly Growth Coordination";
6 is that right?

7 **A.** Yes.

8 **Q.** And the e-mail has an attachment entitled "five-year plan
9 growth coordination." Do you see that?

10 **A.** Yes.

11 **Q.** Let's turn to the attachment. I'm going to be looking at
12 the table that starts about midway down the page.

13 **A.** Uh-huh.

14 **Q.** Mr. Pack, this a table showing different network
15 initiatives at American Airlines; is that right?

16 **A.** Yes.

17 **Q.** And they're ranked in order of priority; is that correct?

18 **A.** Yes.

19 **Q.** And priority here, that means the order in which the
20 initiatives would be completed by American Airlines; is that
21 right?

22 **A.** Based on the different scenarios, yes.

23 **Q.** And you were given this priority order by your boss,
24 Mr. Brian Znotins; is that right?

25 **A.** He's not my boss, but yes.

1 Q. So you received this priority order from Mr. Znotins?

2 A. Yes.

3 Q. Looking at this priority list, it lists NEA/DCA first; is
4 that right?

5 A. Yes.

6 Q. Meaning that the NEA and DCA would be the first places
7 that American would try to invest its fleet; is that right?

8 A. Yes.

9 Q. And then if we look now down to prior 8, it's labeled
10 PHL. Do you see that?

11 A. Yes.

12 Q. And that refers to Philadelphia's International Airport,
13 correct?

14 A. Yes.

15 Q. And we've heard some testimony already about American's
16 plans for Philadelphia already during this trial, but looking
17 at this document, the initiative here is to restore
18 Philadelphia to its 2019 level of departures; is that right?

19 A. Yes.

20 Q. So according to this priority list from Mr. Znotins,
21 American is going to prioritize sending fleet to the
22 Northeast Alliance over sending fleet to Philadelphia,
23 correct?

24 A. Yes.

25 Q. And just to be clear, Mr. Znotins, he's vice president of

1 network planning over at American Airlines; is that right?

2 **A.** Yes.

3 **Q.** So he's in charge of making network decisions for
4 American?

5 **A.** He does have bosses, but yes.

6 **Q.** Let's turn now to the next page. And, again, I'm going
7 to be looking at the table in the middle of this page. So
8 this table is showing us the aircraft that would be allocated
9 to certain hubs and spokes in American Airlines' network; is
10 that right?

11 **A.** Yes.

12 **Q.** And I realize there's a lot of redactions, so you may
13 need to look at your paper copy to answer some of these
14 questions.

15 So this table is comparing the allocation of
16 aircraft in the summer 2024 season to the summer 2019 season;
17 is that right?

18 **A.** Yes.

19 **Q.** And, again, looking at the redacted, you'll have to look
20 at your binder to answer this next question. In each these
21 plans presented on this page, the number of aircraft allotted
22 to Philadelphia is less in 2024 than it was in 2019; is that
23 right?

24 **A.** Yes.

25 **Q.** But prior to 2020 and prior to the Northeast Alliance,

1 American had been planning to continue to grow in
2 Philadelphia; is that right?

3 **A.** I'm not sure without looking at a document.

4 **Q.** Let's turn in your binder to the tab labeled PX372. And,
5 Mr. Pack, this is a series of text messages. They've all
6 been produced originally by your counsel on individual pages
7 and to make it easier to follow, we prepared a demonstrative
8 that puts them all into one single table, and that's 372A in
9 your binder?

10 MR. MOORE: And, Your Honor, we understand that
11 defendants do not object to using 372A for demonstrative
12 purposes.

13 THE COURT: Fine. Go ahead.

14 BY MR. MOORE:

15 **Q.** Are you there at 372A, Mr. Pack?

16 **A.** Yeah.

17 **Q.** This is a series of text messages between Mr. Chad
18 Schweinzger and Mr. Anmol Bhargava and yourself; is that
19 right?

20 **A.** Yes.

21 **Q.** And all of you are employees of American Airlines?

22 **A.** Yes.

23 **Q.** Let's go to the first text message from Mr. Schweinzger
24 to you and Anmol Bhargava at 4:38 p.m. Do you see that?

25 **A.** Yes.

1 **Q.** And Mr. Schweinzger is telling you about a conversation
2 that he had with Vasu Raja; is that right?

3 **A.** Yes.

4 **Q.** He says we were going to fly the XLRs and PHL, but now
5 we're going to fly them in JFK. Do you see that?

6 **A.** Yes.

7 **Q.** And XLR refers to a type of airplane; is that right?

8 **A.** Yes.

9 **Q.** So in this text message, Mr. Schweinzger is referring to
10 moving the XLRs from Philadelphia to JFK; is that right?

11 **A.** I think he's referring to at least some, maybe not all of
12 them, but yes.

13 **Q.** And American was previously going to put these assets in
14 Philadelphia for transatlantic flying; is that right?

15 **A.** Based on his text message, that's what me implies, yes.

16 **Q.** But now, because of the Northeast Alliance, these XLRs
17 will be put into JFK instead of Philadelphia; is that right?

18 **A.** In his text message, he's saying that could be a
19 scenario, yeah.

20 **Q.** And that scenario would happen because of the Northeast
21 Alliance; is that right?

22 **A.** It definitely enabled us to launch new markets in JFK
23 with that airplane.

24 **Q.** And he would not be flying markets from Philadelphia as a
25 result of that; is that right?

1 **A.** Not necessarily.

2 **Q.** Well, the plane would be moved from markets where it
3 might have been flown before to new markets in JFK; is that
4 right?

5 **A.** It could be, but we have other airplanes that we could
6 use. It doesn't talk necessarily about, like, market exits
7 or something.

8 **Q.** Understand. But the XLR, what he's describing here is it
9 would have been in Philadelphia before and now it's going to
10 be in JFK?

11 **A.** In this example, yeah, he's saying we have some, but he
12 would want to move to New York.

13 **Q.** I want to go to his message at 4:39 p.m. Mr. Schweinzger
14 says that Mr. Raja told him that he wanted the revenue
15 forecast for where the planes were going to fly in
16 Philadelphia as well as the forecasts for new flying in JFK;
17 is that right?

18 **A.** That's what it says, yeah.

19 **Q.** And now we're going to go to the second page of the
20 demonstrative, to Mr. Schweinzger's message at 8:25 p.m.

21 **A.** At what time?

22 **Q.** 8:25, and it should be on your screen shortly.

23 In this message, Mr. Schweinzger is referring to an
24 opportunity cost in Philadelphia. Do you see that?

25 **A.** Yes.

1 **Q.** And that means the opportunity cost of no longer flying
2 the XLRs in Philadelphia; is that right?

3 **A.** Yes.

4 **Q.** Meaning the revenue that would be lost from no longer
5 flying those planes in Philadelphia, right?

6 **A.** The profitability, yeah.

7 **Q.** You can put that document to the side, Mr. Pack.

8 So we've just been talking about Philadelphia. I
9 want to talk briefly about American's plans for New York and
10 JFK in particular, as well. In the fall of 2019, American
11 was planning to grow in JFK; is that right?

12 **A.** Not to my knowledge.

13 **Q.** Would a document help refresh your recollection on that?

14 **A.** Yeah.

15 **Q.** So this document is not in the binder. We're going to
16 need to pass it out. And it's not on the exhibit list, but
17 we're just going to be using it for purposes of refreshing
18 recollection, not moving to enter it at this time.

19 THE COURT: Want to read all of it, or a certain
20 portion?

21 MR. MOORE: Only the first three, 2½ pages or so.

22 So take a moment to look at the document, Mr. Pack.

23 THE COURT: So just read that to yourself.

24 BY MR. MOORE:

25 **Q.** Have you finished reading the document, Mr. Pack?

1 **A.** Yeah.

2 **Q.** And you received one of the e-mails in this chain that
3 was forwarded to you? You can see that on the first page; is
4 that right?

5 **A.** Yep.

6 **Q.** Does that refresh your recollection that American was
7 poised to grow in JFK, was planning to grow in JFK as of the
8 fall of 2019?

9 **A.** Yeah, it says the JFK slot waiver due to the MAX
10 grounding would be coming back, restarting in April of that
11 year, so it would have led to growth in versus the pace
12 period.

13 **Q.** Right. So American was planning to grow in part because
14 the MAX was going to be come back online? It was no longer
15 going to be grounded; is that your understanding?

16 **A.** Yes.

17 **Q.** And another reason is because the slot waivers would no
18 longer be in place; is that right?

19 **A.** That's what it says, yes.

20 **Q.** Including slot waivers relating to construction in the
21 JFK; is that right?

22 **A.** I'm not sure about that. It only talks about the MAX.

23 **Q.** But regardless, slot waivers would be expiring, right?

24 **A.** Yes.

25 **Q.** And that would result in growth at JFK; is that right?

1 **A.** Yeah, versus this specific time period.

2 **Q.** And that was also part of American's 2020 revenue plan at
3 that point, right?

4 **A.** I don't know.

5 **Q.** Well, I have another document -- same, to refresh your
6 recollection only. We'll pass it out. It's not in your
7 binder.

8 MS. MALTAS: Your Honor, we would just request if
9 you could instruct the witness as to what it means to have
10 your recollection refreshed. We don't believe that that did.

11 THE COURT: Just read the document with the portion
12 that Mr. Moore directs you to, and then you can put it to the
13 side. And then the question is, do you have -- has that
14 jogged your memory in some way that you have something else
15 to say to him in response to the question, not read what's
16 there or interpret it.

17 THE WITNESS: Okay.

18 THE COURT: No problem.

19 Do you want to read the whole thing? Yeah, it's
20 pretty short.

21 MR. MOORE: It's pretty brief, so --

22 THE COURT: Yes.

23 BY MR. MOORE:

24 **Q.** You can focus on the first page, and then there's a chart
25 on the second. And just look at it briefly.

1 MS. MALTAS: And, Your Honor, we would request that
2 Mr. Pack have the time that he needs --

3 THE COURT: Yes.

4 MS. MALTAS: -- given that they're asking him to
5 refresh his recollection.

6 THE COURT: Just take as much time as you need,
7 Mr. Pack, to read it.

8 THE WITNESS: Okay.

9 MR. MOORE: As the Court instructed, you can put
10 that to the side once you're done reading.

11 THE COURT: What's the question?

12 BY MR. MOORE:

13 **Q.** So does that refresh your recollection that American was
14 intending to grow in JFK as of 2019, even in its 2020 revenue
15 plan?

16 **A.** Yeah, versus the previous base year, because they would
17 have sent them the OD file, which would basically say how
18 many departures and where we were going to fly in JFK.

19 **Q.** So, just to be clear, we're talking about growth in 2020
20 versus what American had been doing in 2019?

21 **A.** Yes.

22 **Q.** I'm going to switch topics now and go back in time to
23 March 2020 -- not a great time for many of us to recall, but
24 we'll try and get through it.

25 So in March 2020, you were asked to join an

1 internal working group at American that was considering
2 potential options for the partnership with JetBlue; is that
3 right?

4 **A.** Yeah.

5 **Q.** And about a month later, you were asked to join the clean
6 team that was analyzing this potential partnership; is that
7 right?

8 **A.** Yes.

9 **Q.** And we've heard a bit about the clean team already in
10 this trial, so I'm not going to go over all of the background
11 of the clean team's work; but just to set the table, you were
12 asked to join the clean team because of your network
13 scheduling experience; is that right?

14 **A.** I don't know the full reason, but I would like to think
15 so.

16 **Q.** But you were told, right, that one reason was because you
17 had network scheduling experience prior to working on the
18 clean team, right?

19 **A.** Yeah, I think so.

20 **Q.** And, in fact, you were the only clean team member from
21 either American or JetBlue that had prior network scheduling
22 experience, to your knowledge; is that right?

23 **A.** I think Dave did, but at a different airline.

24 **Q.** You were the -- do you recall giving a deposition in this
25 litigation -- actually, two depositions?

1 **A.** Yes.

2 **Q.** If you could turn to the first tab in your binder, CID
3 deposition. And you're going to be going to page 109.

4 **A.** What page did you say?

5 THE COURT: 109.

6 BY MR. MOORE:

7 **Q.** And I'm going to be looking at lines 20 to line 9 on the
8 next page. So the question was:

9 "And just trying to understand the process, how
10 much of the scheduling did you do at the American team and
11 then bring to the clean team with JetBlue, or how much was
12 created together?"

13 Your answer was, "So I made the schedule together
14 with v6 because it was clean team, so no one outside the
15 clean team, like, helped build the schedule. Unfortunately,
16 I was the only person on the clean team both -- from both
17 sides that had scheduling experience, so I built the schedule
18 according -- according -- like, with JetBlue all along the
19 way."

20 Do you see that?

21 **A.** Yes.

22 **Q.** Did I read that correctly?

23 **A.** Yes.

24 MR. MOORE: Your Honor, we move to admit that as a
25 party admission.

1 MS. MALTAS: No objection.

2 THE COURT: Admitted.

3 (Plaintiffs' Exhibit Excerpt form Jordan Pack's CID
4 deposition on page 9 admitted into evidence.)

5 BY MR. MOORE:

6 Q. Mr. Pack, I want to discuss some of the potential
7 structures for the partnership with JetBlue that American
8 considered before the clean team even began its work. So if
9 you could turn to PX185.

10 MR. MOORE: And, Your Honor, this is already in
11 evidence.

12 BY MR. MOORE:

13 Q. And, Mr. Pack, just to orient you, this document was
14 produced to us as an Excel. So the first page has some file
15 information, like the name and where it was found, and then
16 the following pages are a PDF reproduction of the
17 spreadsheet. Does that make sense?

18 A. Uh-huh.

19 Q. So looking towards the top of the first page, the last
20 line says, "Garland Options." Do you see that?

21 A. What page, did you say?

22 Q. The very first page.

23 A. Oh.

24 Q. And it's on your screen, as well.

25 A. Oh. The file name. Yes.

1 Q. So the file name is "Garland Options." Do you see that?

2 A. Yes.

3 Q. And "Garland" refers to the Northeast Alliance?

4 A. Yes.

5 Q. And you were involved in the creation of this document;
6 is that right?

7 A. Yes.

8 Q. And it was created early on in the process of evaluating
9 the different options for the partnership; is that right?

10 A. I think so, yeah.

11 Q. And it was an internal discussion document for American;
12 is that right?

13 A. Yes.

14 Q. Let's turn to this second page, which is labeled
15 "Options" on the bottom right-hand corner. Let me know when
16 you're there.

17 A. Uh-huh.

18 Q. So the table on this page is showing us five possible
19 options for partnership structures between American and
20 JetBlue; is that right?

21 A. Yeah. They were different scenarios that we were
22 throwing around.

23 Q. And they're labeled A, B, C, D, and E in column B; is
24 that right?

25 A. Yes.

1 Q. And column C in this table is labeled "Headline." Do you
2 see that?

3 A. Yes.

4 Q. And that provides a brief description of the five
5 scenarios or options that we were looking at in this table?

6 A. I think so, yeah.

7 Q. And then moving one column further to the right, it's
8 labeled "ATI." Do you see, that?

9 A. Yes.

10 Q. And your understanding is "ATI" stands for "antitrust
11 immunity"?

12 A. Yeah. It's a formal definition.

13 Q. But here your team was using "ATI" to mean options that
14 would include some form of network coordination between
15 American and JetBlue; is that right?

16 A. I think so. I don't know if it was just that or other
17 things.

18 Q. Sorry, what was the end of your answer?

19 A. I think so. I just don't know if it was just network
20 coordination or other things.

21 Q. But some form of coordination --

22 A. Yeah.

23 Q. -- between the two companies, correct?

24 A. Uh-huh.

25 Q. And your team used the term "ATI" because you were

1 relying on your experience with American's international
2 joint ventures that due involve network coordination; is that
3 right?

4 **A.** Yeah, we had been familiar with the term "ATI" in that
5 regard.

6 **Q.** And "that regard" being American's international joint
7 ventures; is that right?

8 **A.** Yes.

9 **Q.** So the first time options in this table are labeled with
10 "yes" under the ATI column. Do you see that?

11 **A.** Yes.

12 **Q.** And that means that there would be some form of
13 coordination between American and JetBlue in these options;
14 is that right?

15 **A.** I think so, yeah.

16 **Q.** And then the last three options, option C, D, and E, say
17 "no" in the ATI column; is that right?

18 **A.** Yes.

19 **Q.** That means that in these options, American and JetBlue
20 would not be coordinating their networks; is that right?

21 **A.** I don't know, because that's not what it's labeled as.

22 **Q.** Well, as we were discussing ATI earlier, "ATI" means
23 coordination, right?

24 **A.** Yeah.

25 **Q.** And when it says "no," that means no coordination, right?

1 **A.** I guess so.

2 **Q.** Let's go to the headline for option D, and we'll zoom in
3 on the screen. The headline for option D says "Absent ATI,
4 trade JetBlue, five Boston gates for approximately 25
5 additional JFK slots." Do you see that?

6 **A.** Yes.

7 **Q.** So this option is contemplating that JetBlue would give
8 25 of its slots at JFK to American; is that right?

9 **A.** Yeah, that's what it says. Yes.

10 **Q.** And in exchange, American would give JetBlue five of its
11 gates in Boston; is that right?

12 **A.** Yes. That's what it says.

13 **Q.** And then the headline goes on to say, "Fully utilize to
14 build organic TA connectivity." Do you see that?

15 **A.** That's what it says, yes.

16 **Q.** And "TA" refers to transatlantic; is that right?

17 **A.** Yes.

18 **Q.** And "organic" refers to American flying on its own
19 planes; is that right?

20 **A.** Yes.

21 **Q.** So this option is contemplating more transatlantic flying
22 by American out of JFK on its own planes; is that right?

23 **A.** Yes.

24 **Q.** And to do that additional flying on its own planes,
25 American would be using the slots that it obtained from

1 JetBlue; is that right?

2 **A.** It could be an enabler of that, yes.

3 **Q.** American would do that additional flying on its own
4 planes without network coordination; is that right?

5 **A.** It doesn't say "network coordination" here, so I don't
6 know.

7 **Q.** Well, it says "absent ATI," right?

8 **A.** Yes.

9 **Q.** And as we've established, that means some form of
10 coordination, correct?

11 **A.** Yes.

12 **Q.** So it would be doing this additional flying without
13 coordination; is that right?

14 **A.** Based on here, yeah.

15 **Q.** And let's go to the headline for option E now. That's
16 described as a slot swap. Do you see that?

17 **A.** Uh-huh.

18 **Q.** And in this option, American would trade some of its
19 LaGuardia slots in exchange for JetBlue's JFK slots; is that
20 correct?

21 **A.** Yes.

22 **Q.** But this option, again, does not contemplate capacity
23 coordination or network coordination in order to have the
24 slot swap, right?

25 **A.** It says no ATI.

1 Q. And it also says in the headline, but "without
2 coordination," right?

3 A. Yes.

4 Q. And it's generally true that capacity coordination,
5 network coordination, like the -- like American and JetBlue
6 have in the NEA, that's not required in order to have a slot
7 swap; is that right?

8 A. Technically not, no.

9 Q. I want to look now at the notes comments column for the
10 two options we've just been discussing. It's all the way on
11 the right-hand side of the page. And we're going to be
12 looking at options D and E.

13 A. Which ones did you say?

14 THE COURT: D and E.

15 BY MR. MOORE:

16 Q. D and E, last two options. In both of these options, it
17 says, "Absent ATI, there's a likelihood of AA-B6 overlap."
18 Do you see that?

19 A. Yes.

20 Q. The AA-B6 overlap there is referring to routes where
21 American and JetBlue would be competing against each other,
22 right?

23 A. That's what I take it to mean, yes.

24 Q. And it's saying that American and JetBlue would be
25 competing against each other on these routes absent network

1 coordination; is that right?

2 **A.** It doesn't say competing. It could mean we just have --
3 we were flying similar markets as before. We have the
4 frequency of the same time.

5 **Q.** Well, you just said that the AA-B6 overlap refers to the
6 airlines competing against each other, right?

7 **A.** Yes.

8 **Q.** And it's saying that, absent network coordination, they
9 would be competing against each other, right?

10 **A.** Yes.

11 MS. MALTAS: Objection. Misstates testimony.

12 THE COURT: Overruled. You can answer.

13 BY MR. MOORE:

14 **Q.** So just to ask the question, make sure we get the answer,
15 this is saying that, absent network coordination, American
16 and JetBlue would be competing against each other, right?

17 **A.** Based on what's written, yes.

18 **Q.** Let's turn now in your binder to PX268.

19 MR. MOORE: And, Your Honor, this document is also
20 already in evidence. We'll be publishing a redacted version.

21 THE COURT: Who came up with the name "Garland"?

22 THE WITNESS: I think Vasu, but I'm not totally
23 sure.

24 THE COURT: And do you know why?

25 THE WITNESS: It's a suburb of Dallas that is in

1 the northeast.

2 MR. MOORE: I just learned something I didn't know,
3 so . . .

4 BY MR. MOORE:

5 Q. Mr. Pack, this is a slide deck titled "Project Garland --
6 Overview and Status Update." Do you see that?

7 A. Yeah.

8 Q. And you made this deck as part of American's evaluation
9 of different scenarios related to the Northeast Alliance,
10 correct?

11 A. Yeah, I made components of it.

12 Q. Let's turn to slide 5. So this slide is showing us
13 different scenarios for potential partnerships between
14 American and JetBlue; is that right?

15 A. Yes.

16 Q. I want to focus on scenarios 0 and 2 for our discussion
17 today. So let's start with scenario 2, which is the third
18 row, bottom of the table, and labeled "East Coast
19 International Alliance." Do you see that?

20 A. Yes.

21 Q. And this scenario is referred to as a "fallback
22 scenario." Do you see that?

23 A. Yes.

24 Q. And one column over to the right, "Partnership
25 Structure," it describes this as an Alaska structure on the

1 East Coast. Do you see that?

2 **A.** Yes.

3 **Q.** And it also says "codeshare, West Coast International
4 Alliance structure," right?

5 **A.** Yes.

6 **Q.** So in this scenario, American would have a similar
7 partnership with JetBlue as it does with Alaska Airlines; is
8 that right?

9 **A.** It doesn't list the full structure. It has, like, growth
10 incentive and other things, so I'm not entirely sure. But
11 it's listed as it would be similar to that, yeah.

12 **Q.** And this scenario also lists the growth structure, right,
13 in the third bullet?

14 **A.** Yes.

15 **Q.** And that's also included in the Alaska partnership?

16 **A.** That, I don't know.

17 **Q.** Nevertheless, this scenario shares -- is described as
18 being similar to the American and Alaska partnership,
19 correct?

20 **A.** Yes.

21 **Q.** Let's go to the first row now, scenario 0, which is
22 labeled "East Coast JV." Do you see that?

23 **A.** Yes.

24 **Q.** And it's referred to as a focus; is that right?

25 **A.** Yes.

1 **Q.** And this partnership structure is described as a combined
2 carrier joint venture with geography scope restrictions. Do
3 you see that?

4 **A.** Yes.

5 **Q.** And it's also described as having an RSA plus capacity
6 governance; is that right?

7 **A.** Yes.

8 **Q.** And "RSA" stands for "revenue sharing agreement"; is that
9 right?

10 **A.** Yes.

11 **Q.** And "capacity governance" refers to capacity
12 coordination?

13 **A.** Yes.

14 **Q.** Scenario 0, what we're seeing in this row, is describing
15 what ultimately became the Northeast Alliance; is that right?

16 **A.** To the best of my knowledge, yeah.

17 **Q.** I want to walk through a few differences between
18 scenario 0 and scenario 2 that we've just been discussing,
19 and let's start with the network scope column. So looking at
20 scenario 2 first, according to this column, scenario 2 would
21 only include American's international network; is that right?

22 **A.** That's what's listed, yes.

23 **Q.** Meaning American's domestic network would be excluded
24 from this partnership scenario?

25 **A.** Yes.

1 **Q.** So the domestic overlap routes where American and JetBlue
2 offer overlapping service, those would not be included in
3 this scenario; is that right?

4 **A.** Yeah, it's no code on overlapping nonstop ODs.

5 **Q.** But looking now at scenario 0, unlike scenario 2, that
6 scenario would include both American's and JetBlue's domestic
7 networks; is that right?

8 **A.** Yes, with the exception of JetBlue transatlantic.

9 **Q.** So both of the domestic networks, that would be included?

10 **A.** Yes.

11 **Q.** And unlike scenario 2, this proposal would then include
12 the domestic overlapping routes between American and JetBlue;
13 is that right?

14 **A.** Yes.

15 **Q.** Let's look now one column further to the right, which is
16 labeled "Restrictions." Do you see that?

17 **A.** Yes.

18 **Q.** According to this column, scenario 2 would involve no
19 codesharing on overlapping nonstop routes; is that right?

20 **A.** Yes.

21 **Q.** But scenario 0 does not contain that same restriction; is
22 that right?

23 **A.** It does not.

24 **Q.** And let's go back now to the partnership structure
25 column. And looking at scenario 0, as we mentioned earlier,

1 this scenario has revenue sharing and capacity coordination,
2 right?

3 **A.** Yes.

4 **Q.** But scenario 2, the East Coast international alliance,
5 that does not have capacity coordination, correct?

6 **A.** Correct.

7 **Q.** And as we've discussed, the Northeast Alliance, like
8 scenario 0, has both capacity coordination and revenue
9 sharing; is that right?

10 **A.** Can you say that one more time?

11 **Q.** The Northeast Alliance has revenue sharing and capacity
12 coordination like scenario 0; is that right?

13 **A.** Yes.

14 **Q.** And you're not personally aware of any partnerships
15 between two domestic airlines that involve both revenue
16 sharing and capacity coordination -- is that right? -- other
17 than the Northeast Alliance?

18 **A.** Not in the United States, no.

19 **Q.** Let's look now all the way over to the right again, the
20 initial value range column. Do you see that?

21 **A.** Yes.

22 **Q.** So this column, it's not reflecting consumer savings that
23 would be generated by the partnership, right?

24 **A.** No.

25 **Q.** It's showing us the profits that will be generated by

1 both American and JetBlue, both individually and together as
2 part of the scenarios that are presented on this slide; is
3 that right?

4 **A.** I don't think it's profitability. I think it's revenue.

5 **Q.** Thank you for that clarification. So this is showing us
6 the revenues that would be generated by both American and
7 JetBlue individually and together in each of the scenarios
8 described on the slide?

9 **A.** That's my impression, yeah.

10 **Q.** And the projected revenues for scenario 0, the East Coast
11 JV, are higher than scenario 2, the ECIA; is that right?

12 **A.** Yes.

13 **Q.** You can put that document to the side.

14 I want to switch gears now and talk about what the
15 clean team did once you decided on the structure that
16 eventually became the Northeast Alliance. So to evaluate the
17 business case for the Northeast Alliance, the clean team put
18 together a schedule for the combined networks of American and
19 JetBlue; is that right?

20 **A.** Yes.

21 **Q.** And to put together that schedule, the clean team started
22 with a baseline, which was each airline's actual schedule in
23 September of 2019; is that right?

24 **A.** Yes.

25 **Q.** And then using that September 2019 schedule, the clean

1 team went market by market to construct this combined
2 schedule; is that right?

3 **A.** Yes.

4 **Q.** And the year 2023 was chosen as the goal post for the
5 completion of this combined schedule; is that right?

6 **A.** To represent steady state, yeah.

7 **Q.** And the clean team named this combined schedule for 2023
8 the v2 schedule; is that right?

9 **A.** Yes.

10 MR. MOORE: And just for the court reporter, that's
11 a "v," as in "Victor," so "v2."

12 BY MR. MOORE:

13 **Q.** The purpose of this v2 schedule was to evaluate the
14 business case for the partnership with JetBlue; is that
15 right?

16 **A.** Yes.

17 **Q.** And then after creating the schedule, the clean team ran
18 the schedule for a forecasting model called "Raven"; is that
19 right?

20 **A.** Yes.

21 **Q.** And Raven is a tool that's used in order to generate
22 forecasts based on a particular schedule input; is that
23 right?

24 **A.** Yes.

25 **Q.** And American uses -- uses Raven today in order to produce

1 business decisions; is that right?

2 **A.** Yes.

3 **Q.** And in the case of the clean team, the Raven outputs for
4 the v2 schedule, those were used to evaluate the business
5 case for the Northeast Alliance; is that right?

6 **A.** Yes.

7 **Q.** But the Raven outputs, in addition to being used for the
8 business case, were also provided to the economists who were
9 working for American and JetBlue in this litigation, Compass
10 Lexecon; is that right?

11 **A.** Yes.

12 **Q.** And it's your understanding that the economists used
13 these Raven outputs from the 2023 v2 schedule to calculate
14 the potential consumer benefits from the Northeast Alliance;
15 is that right?

16 MS. MALTAS: Objection. Lacks foundation.

17 THE COURT: Sustained.

18 BY MR. MOORE:

19 **Q.** Mr. Pack, you had several meetings with the economists
20 from Compass Lexecon; is that right?

21 **A.** Yes.

22 **Q.** And you spoke with them about the v2 schedule; is that
23 right?

24 **A.** Yes.

25 **Q.** And you spoke with them about the inputs that went into

1 the schedule; is that right?

2 **A.** What do you mean "inputs"?

3 **Q.** You explained the schedule file that was provided and put
4 into Raven; is that right?

5 **A.** Yeah.

6 **Q.** And the choices that were made in putting together that
7 schedule file, right?

8 **A.** I don't remember telling them why we did certain things.

9 **Q.** Well, if they had questions about why something happened
10 or something looked wrong, you would answer that question,
11 right?

12 **A.** Yeah. For the schedule, yes.

13 **Q.** And as part of those discussions, is it your
14 understanding that the economists were using these Raven
15 outputs to calculate consumer benefits as part of the
16 Northeast Alliance?

17 **A.** Yes.

18 **Q.** I want to talk now about what's included in this v2
19 schedule. So the combined schedule specifies the number of
20 times that American or JetBlue would be flying in a
21 particular market; is that right?

22 **A.** Yes.

23 **Q.** And it also specifies what times the airplanes would be
24 flying; is that right?

25 **A.** Yes.

1 **Q.** And what airplanes would be used for that flying; is that
2 right?

3 **A.** Yes.

4 **Q.** And it also shows us which airline American or JetBlue
5 would be flying in that market; is that right?

6 **A.** Yes.

7 **Q.** Let's turn in your binder to PX284.

8 MR. MOORE: And, Your Honor, this document is
9 already in evidence.

10 THE COURT: Okay.

11 BY MR. MOORE:

12 **Q.** I want to turn to -- well, actually, let's start on the
13 first page first. Mr. Pack, this is a schedule fact pack
14 that you produced from the schedule that was created by the
15 clean team; is that right? You have it zoomed in on your
16 screen there.

17 **A.** Yes.

18 **Q.** So the schedule fact pack provides a summary of the clean
19 team's schedule; is that right?

20 **A.** Yes.

21 **Q.** Let's turn now to the second page. And I'm going to be
22 looking at the table on the far right-hand side, around the
23 middle of the page. It's labeled "Market Transfers, 2 to 1."
24 Do you see that?

25 **A.** Yes.

1 **Q.** So this is showing us markets where both carriers were
2 competing against each other on routes prior to the Northeast
3 Alliance; is that right?

4 **A.** Yes.

5 **Q.** But after implementation of the Northeast Alliance, only
6 one airline would be flying on these routes, according to the
7 clean team's schedule; is that right?

8 **A.** Yes.

9 **Q.** So, for example, before the Northeast Alliance, American
10 and JetBlue competed against each other on the route between
11 JFK and San Francisco; is that right?

12 **A.** Yes.

13 **Q.** But now in the 2023 v2 schedule, only JetBlue would be
14 flying that route; is that right?

15 **A.** Yeah, they would be the only nonstop carrier.

16 **Q.** And the same thing for JFK to Las Vegas, as well, right?

17 **A.** Yes.

18 **Q.** And according to this table, both American and JetBlue
19 flew the route between JFK and Phoenix as well prior to
20 Northeast Alliance; is that right?

21 **A.** Yes.

22 **Q.** And Phoenix, that's one of American's hubs; is that
23 right?

24 **A.** Yep.

25 **Q.** But in the v2 schedule, only American would be flying

1 that route; is that right?

2 **A.** Yes.

3 **Q.** All right. You can put that document to the side.

4 I want to talk a bit about the mechanics of how the
5 clean team put the v2 schedule together. So in creating the
6 schedule, the number of available gates at the NEA airports
7 from American and JetBlue, that was an important input; is
8 that right?

9 **A.** Yes.

10 **Q.** Because you can't schedule more departures or arrivals
11 than you have gates to park at, right?

12 **A.** Yes.

13 **Q.** And when you were constructing the 2023 v2 schedule, the
14 clean team used the same number of gates as the airlines
15 actually had in 2019; is that right?

16 **A.** I don't remember if it was the -- looking backwards in
17 2019, or if it was a future infrastructure projection.

18 **Q.** So you don't know whether you looked in the future or
19 not?

20 **A.** I just don't remember what sheet I used for the number of
21 gates.

22 **Q.** Can you explain what you mean by what sheet?

23 **A.** Like, we have a document that would say this date, we
24 have this number of gates; and this date, we have this number
25 of gates.

1 Q. But you didn't use gates the airlines didn't have, right?

2 A. Yes.

3 Q. And you weren't working with American's outside
4 scheduling team in order to figure out if you had more gates
5 in the future, right?

6 A. They did provide inputs of, like -- I went and asked them
7 how many gates we would have on certain dates.

8 Q. And so you just don't know one way or the other whether
9 in the v2 schedule you used the gates that you had in 2019?

10 A. Yeah, I don't know which document I referred to to say we
11 had this number of gates specifically on what gate.

12 Q. Number of slots, that was also an input into the
13 schedule, is that right?

14 A. Yes.

15 Q. And it's, again, important because you can't schedule
16 more arrivals or departures than you have slots; is that
17 right?

18 A. Yes.

19 Q. At least during slot constrained times of the day,
20 correct?

21 A. Correct.

22 Q. And in constructing the 2023 v2 schedule, the clean team
23 assumed that American and JetBlue would have the same number
24 of slots as they did in 2019, right?

25 A. To my knowledge, yes.

1 Q. And the number of airplanes, that was another important
2 input into the schedule, correct?

3 A. Yes.

4 Q. But unlike the slots, we know slots, you said they were
5 the same in 2019 and possibly gates, the clean team did not
6 use the exact same fleet as the airlines had in 2019 when
7 they were constructing this 2023 v2 schedule; is that right?

8 A. Correct.

9 Q. The clean team also included aircraft that would be
10 delivered in the future when putting together the schedule;
11 is that right?

12 A. Yes, and by 2023.

13 Q. The clean team, for example, assumed that American would
14 have the 321XLR, right?

15 A. Yes.

16 Q. And that was something that you didn't have in 2019?

17 A. Correct.

18 Q. I want to take a look now at the 2023 v2 schedule, and
19 it's going to be PX288 in your binder.

20 MR. MOORE: And, Your Honor, this exhibit is also
21 already in evidence.

22 THE COURT: All right. A demonstrative or the
23 original?

24 MR. MOORE: This is just the originally produced
25 document. For now, at least. We might need to use the

1 demonstrative.

2 BY MR. MOORE:

3 **Q.** Mr. Pack, this is a similar spreadsheet as -- similar to
4 the spreadsheet as we showed before, so the first page
5 contains the file name and the location of the file, and then
6 the following pages are a PDF reproduction of the
7 spreadsheet. Does that make sense?

8 **A.** Yes.

9 **Q.** So looking again at the first page, the top is labeled
10 "v2 optimized schedule data pack-clean team-20 May." Do you
11 see that?

12 **A.** Yes.

13 **Q.** Let's turn to the tab labeled "v2 resources," and it's
14 page 22 if you're looking in your hard copy, but we'll put it
15 on the screen, as well.

16 Are you there?

17 **A.** Yes.

18 **Q.** So looking at the top left-hand corner, this says "block
19 hours/aircraft usage." Do you see that?

20 **A.** Yes.

21 **Q.** And a block hour refers to the amount of time that an
22 airplane is on use in a particular route; is that right?

23 **A.** Yes.

24 **Q.** So it includes all the time from when the airplane pushes
25 back from the gate until it arrives at the gate at its

1 arrival airport; is that right?

2 **A.** Right.

3 **Q.** So "more block hours" generally means you need more
4 fleet; is that right?

5 **A.** Yes.

6 **Q.** So let's look at column E in the spreadsheet, which is
7 showing the block hours for airplanes that touched NEA
8 airports in the baseline schedule in September of 2019. Is
9 that right?

10 **A.** Yes.

11 **Q.** Meaning the block hours that were actually used by
12 American and JetBlue in 2019; is that right?

13 **A.** Yes.

14 **Q.** And then looking over at column C, this is showing the
15 block hours for airplanes that would be touching NEA airports
16 in the 2023 v2 schedule; is that right?

17 **A.** Yes.

18 **Q.** And for American and JetBlue together, the block hours
19 are more than the 2023 v2 schedule than in the 2019 baseline;
20 is that right?

21 **A.** They aren't summed here, but I know collectively they
22 are, yes.

23 **Q.** Collectively, they're greater for the v2 schedule than in
24 the September 2019 baseline; is that right?

25 **A.** Yes.

1 **Q.** So the fleet being relied on in the 2023 v2 schedule is
2 larger than the fleet in the base 2019 schedule; is that
3 right?

4 **A.** Yes.

5 **Q.** And just stepping back for a moment, when constructing
6 this v2 2023 schedule, the clean team was looking at the NEA
7 footprint in isolation; is that right?

8 **A.** Do you mean in terms of how we're building the schedule?

9 **Q.** I mean, when looking at -- and creating the schedule, you
10 were constructing only -- you were only looking at the NEA
11 routes. You were not looking outside of the NEA routes to
12 construct the schedule; is that right?

13 **A.** Correct.

14 **Q.** So the clean team, for the purposes of this schedule, was
15 not checking to see whether they needed to take airplanes
16 from elsewhere in the network in order to fly this v2
17 schedule; is that right?

18 **A.** I can only speak for American's perspective, which for
19 us, there was a neutral or close to neutral fleet impact and
20 we instead relied on airplanes like the XLR that would enable
21 some of these markets to happen.

22 **Q.** But that was a new airplane, right?

23 **A.** Yes.

24 **Q.** And you didn't check to see whether creating with this --
25 creating this NEA schedule would have impacts outside of the

1 NEA footprint for purposes of the v2 schedule, right?

2 **A.** No.

3 MR. MOORE: Your Honor, I'm about to switch topics
4 and seeing it's about one o'clock, would now be a good time
5 to break?

6 THE COURT: All right. Then we'll start a little
7 bit before 2:00 when we resume.

8 We'll take the -- lunch break now. I'll see you a
9 couple minutes before two.

10 Thanks.

11 (Court in recess at 1:00 p.m.)

12 (The following reported by Rachel Lopez).

13 (Court in session at 1:56 p.m.)

14 THE COURT: Ready to resume?

15 MR. MOORE: Yes, Your Honor.

16 THE COURT: Go ahead.

17 BY MR. MOORE:

18 **Q.** Welcome back, Mr. Pack.

19 So before the lunch break, we were talking about
20 two schedules, the 2019 baseline schedule and the v2
21 schedule. Do you recall that?

22 **A.** Yes.

23 **Q.** I just want to talk about one more schedule now. The
24 clean team at one point produced a schedule called the v4
25 schedule; is that right?

1 **A.** Yes.

2 **Q.** And that v4 schedule showed what the world would have
3 looked like if the NEA were in place in 2019; is that right?

4 **A.** Yeah. That's our best guess.

5 **Q.** So like the v2 schedule, the v4 schedule was using the
6 same number of slots as the airlines had in 2019, right?

7 **A.** Yes.

8 **Q.** And it was also keeping the gates consistent with 2019,
9 right?

10 **A.** Yes.

11 **Q.** But unlike the v2 schedule, the v4 schedule did also keep
12 the fleet of the two airlines the same, as well; is that
13 right?

14 **A.** Yes.

15 **Q.** So unlike the v2 schedule, the v4 schedule did not look
16 at the Northeast Alliance footprint in isolation; is that
17 right?

18 **A.** Correct.

19 **Q.** You were looking at the full network to see what effects
20 would happen on other places in the network, when making
21 changes within the Northeast Alliance footprint, correct?

22 **A.** We did include the network as to see their impacts, but
23 we had to keep the fleet in constant, so we needed to fund it
24 from somewhere.

25 **Q.** So you were funding it from outside the Northeast

1 Alliance footprint, correct?

2 **A.** From American's perspective, we kept it roughly the same
3 by moving airplanes from other hubs, for example.

4 **Q.** Let's turn in your binder to PX297.

5 MR. MOORE: And Your Honor, this document is in
6 evidence.

7 THE COURT: Okay.

8 BY MR. MOORE:

9 **Q.** Are you there, Mr. Pack?

10 **A.** Yes.

11 **Q.** So this is an e-mail chain with the subject
12 line, "Project Garland clean team call;" is that right?

13 **A.** Yes.

14 **Q.** I want to turn to your e-mail on Thursday, May 21, 2020,
15 at 5:06 p.m. It appears on the second page of the document.

16 Are you there?

17 **A.** Yes.

18 **Q.** So in this e-mail, you're discussing a v4 schedule,
19 correct?

20 **A.** Yes.

21 **Q.** And you write, "Following up on the v4 schedule. This
22 schedule serves as our best guess as to what would have
23 happened in 2019 if American and JetBlue had the partnership
24 we are jointly proposing. The key difference with this v4
25 compared to v2 is that we have to fund aircraft and resources

1 neutral." Do you see that?

2 **A.** Yes.

3 **Q.** So that's what we were talking about earlier, right,
4 having to fund the aircrafts and keeping the fleet the same
5 as it was in 2019; is that right?

6 **A.** Yes.

7 **Q.** So v4 is different from v2 because you're not using the
8 airplanes that American or JetBlue expected to have in your
9 future, right?

10 **A.** Yes.

11 **Q.** You're using what they actually had in 2019?

12 **A.** Yes.

13 **Q.** And by keeping the fleet constant, you can then compare
14 the September 2019 baseline schedule with the 2019 NEA
15 schedule, right?

16 **A.** Yes.

17 **Q.** And that would be an apples to apples comparison, right?

18 MR. JONES: Objection. Misstates everything.
19 Testimony.

20 THE COURT: Overruled.

21 BY MR. MOORE:

22 **Q.** So comparing that 2019 baseline schedule with the 2019
23 NEA schedule, that would give you an apples-to-apples
24 comparison, right?

25 **A.** Of what?

1 **Q.** Well, it would let you look at what the network was
2 without the NEA, and with the NEA, at the same point in time,
3 right?

4 **A.** It would allow you to see, you know, if we -- what we
5 thought if we had done this in 2019, what we would have been
6 able to do in the Northeast, like what American would have
7 done, what we wouldn't have been able to do, for example.

8 **Q.** So you can look at -- forgive the word, the delta between
9 the stand-alone case in 2019, and the NEA in 2019 footprint;
10 is that right?

11 **A.** When you say the stand-alone case in 2019, say what you
12 mean?

13 **Q.** Fair enough. So you can compare the American and
14 JetBlue, what they actually did in 2019, and what they could
15 have done with the NEA in place in 2019, right? And you can
16 look at the delta between those two?

17 **A.** It was a guess of what we did. For American's
18 perspective, we basically just moved airplanes from our hubs
19 to the NEA, or actually moved airplanes out of the NEA and to
20 other hubs.

21 **Q.** But to be clear, if you compare those two schedules?

22 THE COURT: In v4.

23 THE WITNESS: Yes.

24 THE COURT: Go ahead.

25 BY MR. MOORE:

1 **Q.** But to be clear, when you compare those two schedules,
2 you can see what the change is, what the potential growth is
3 that's attributable to the NEA, right?

4 **A.** I don't think so, because it doesn't show like what the
5 NEA actually came to be, and what we defined the NEA to be
6 as, we designed it in the clean team.

7 **Q.** And you designed it for 2023, right, not 2019?

8 **A.** Yeah, we designed it for what we thought the future would
9 be, post-COVID.

10 **Q.** Let's go your sentence starting with, "I have uploaded."
11 Do you see that?

12 **A.** Yes.

13 **Q.** It's midway through the paragraph. And I actually want
14 to start on the next line with, "We can chat." Do you see
15 that?

16 **A.** Yes.

17 **Q.** So you write, "We can chat about what I get ideas you
18 guys might have to fund increased flying on the B6 side or
19 what 2023 increased flying wouldn't have happened in 2019."

20 Do you see that?

21 **A.** Yes.

22 **Q.** So you're presenting two alternatives in this sentence;
23 is that right?

24 **A.** Yes.

25 **Q.** And the first is fund increase flying on the B6 side.

1 And by that you mean JetBlue moving aircraft around from
2 outside of the NEA into the NEA in order to support that
3 flying; is that right?

4 **A.** Moving it wherever they fund it from, yes.

5 **Q.** But whatever you need to do in order to keep the
6 footprint neutral, the aircraft fleet neutral, but have the
7 NEA in place, right?

8 **A.** Yes.

9 **Q.** And then the second part of the sentence you say, "What
10 2023 increased flying wouldn't have happened in 2019?" Do
11 you see that?

12 **A.** Yes.

13 **Q.** And when you say what increased flying in the 2023 -- or
14 rather, strike that, let me start again.

15 When you say that, what you mean is what increased
16 flying in the 2023 v2 schedule would not have occurred, or
17 that JetBlue would have had to cancel in the 2019 v4
18 schedule; is that right?

19 **A.** Are you asking within the NEA?

20 **Q.** More generally. The network, more generally.

21 **A.** You can compare versus like 2023. So for example, like,
22 on American, we would have had the XLR be delivered. So in
23 this case, we couldn't have launched a lot of the new markets
24 that we did in the v2 schedule.

25 **Q.** And same for JetBlue, right? They have -- what you're

1 saying here is they would have to cancel some routes that
2 were projected in the 2023 v2 schedule, because you're
3 keeping the fleet constant; is that right?

4 **A.** I don't know if it's cancelling, but not flying something
5 that wouldn't have happened in 2019, yeah.

6 **Q.** I want to go to the e-mail from Mr. Fintzen, on Friday,
7 May 29th, at 7:56 a.m.

8 So it starts on the first page of the document and
9 then spills over to the second page. That's where the meat
10 of the e-mail is.

11 Do you see that?

12 **A.** Yes.

13 **Q.** So this is eight days after your request for JetBlue to
14 provide data for the v4 schedule; is that right?

15 **A.** Yes.

16 **Q.** And Mr. Fintzen, we've heard from him already during this
17 trial, but he was a JetBlue employee, who was a clean team
18 member; is that right?

19 **A.** Yes.

20 **Q.** And he says our v4 data pack with adjusted frequencies
21 and aircraft types is posted up in the shared folder. Do you
22 see that?

23 **A.** Yes.

24 **Q.** So he's providing you here with the updated v4 file with
25 the JetBlue data included; is that right?

1 **A.** Yes.

2 **Q.** I want you to go to PX340 now.

3 MR. MOORE: And Your Honor, this document is also
4 already in evidence.

5 THE COURT: Okay.

6 BY MR. MOORE:

7 **Q.** So this is another one of those spreadsheets that has the
8 first page with the file name and file location, and then the
9 spreadsheet is reproduced after the first page.

10 So if you look at the top of the first page, it
11 says the file name is, "2019 restrained-optimized data
12 pack-clean team-20 May-B6-vf."

13 Do you see that?

14 **A.** Yes.

15 **Q.** So this document is a copy of the v4 schedule? Is that
16 right?

17 **A.** It's not the schedule, it's the frequency matrix for the
18 schedule. Yeah.

19 **Q.** But for the v4 schedule, it's the frequency matrix?

20 **A.** Yes.

21 **Q.** Let's turn to the tab labeled "v4 resources," and it's
22 all the way towards the end, page 82 of your hard copy, but
23 again, we'll have it on the screen, as well.

24 Are you there?

25 **A.** Yeah.

1 **Q.** So this tab is showing us block hours for American and
2 JetBlue and the 2019 baseline schedule, the 2019 v4 schedule,
3 and the 2023 v2 schedule; is that right?

4 **A.** Yeah -- can you say that one more time?

5 **Q.** So it's showing us the data for all three of the
6 schedules that we've just been discussing, the baseline
7 schedule, the v2 schedule, and the v4 schedule; is that
8 right?

9 **A.** Oh. Yes.

10 **Q.** And the table on the left-hand side, that's data from
11 American; is that right?

12 **A.** Yes.

13 **Q.** And then the tables on the right-hand side, those are
14 tables from JetBlue that include the data you've received
15 from Mr. Fintzen; is that right?

16 **A.** Yes.

17 **Q.** And the top table on the right, that is for the v4
18 schedule; is that right?

19 **A.** It's not labeled, but because the block hours are within
20 1 percent, I think so.

21 **Q.** And 1 percent, that's keeping it relatively similar to
22 what the airlines flew in 2019. That's what you're
23 referencing?

24 **A.** Yes.

25 **Q.** And this table, it's showing us JetBlue's flying both

1 within and outside the Northeast Alliance, in both the
2 September 2019 baseline, as well as in the v4 schedule; is
3 that right?

4 **A.** Yes.

5 **Q.** And if you look at -- let's look at cells J and I think
6 that's row 11, so the 2,292, and column L, row 11, 2,459. Do
7 you see that?

8 **A.** Yes.

9 **Q.** If you compare each of those to the flying outside the
10 Northeast Alliance -- actually, let me back up. When it says
11 "JV scope," that's referring to the footprint of the
12 Northeast Alliance; is that right?

13 **A.** Yes.

14 **Q.** And if you compare that to the outside the Northeast
15 Alliance, in both of these cases, the block hours are roughly
16 two to three times -- or three to four times, rather, the
17 size of the flying that's outside of the scope of the
18 Northeast Alliance; is that right?

19 MS. MALTAS: Objection, Your Honor. I'm just going
20 to object to foundation, because this is the information that
21 was provided by B6, so I know that it was sent to Mr. Pack,
22 but I'm not sure what foundation that he has to talk about
23 how JetBlue put together their schedule.

24 THE COURT: Fair point.

25 MR. MOORE: Your Honor, I'm not asking what

1 decisions they made on specific routes. I'm just asking him
2 this information. He was responsible for putting together
3 the schedule.

4 THE COURT: You can ask him about what it says,
5 yeah.

6 BY MR. MOORE:

7 Q. So again, Mr. Pack, just looking at what we see here in
8 this spreadsheet, the flying is roughly three to four times
9 larger within the JV scope, than outside the JV scope, in
10 both the base and the v4 schedule; is that right?

11 A. Yes, that's what's here.

12 Q. If we look now at column K, row 11, this was showing the
13 flying that JetBlue was doing in the baseline schedule
14 outside of Northeast Alliance. Is that your understanding?

15 A. To my knowledge, and based on the label, yeah.

16 Q. If we look at column M, row 11, this shows us the flying
17 that the JetBlue would be doing outside the Northeast
18 Alliance and the v4 schedule; is that right?

19 A. Based on my knowledge and the label, yes.

20 Q. And column M, that shows -- column M, as in Mary. So
21 comparing these two columns, column M is showing more than
22 100 fewer block hours allocated to flying outside the
23 Northeast Alliance in the v4 schedule; is that right?

24 A. Yes, that's what was here.

25 Q. Meaning that JetBlue would be doing less flying outside

1 of the Northeast Alliance in order to fund the flying within
2 the Northeast Alliance; is that right?

3 **A.** Yeah. Based on this document, they've moved that flying.

4 **Q.** And you have to do that, right, because it's a zero sum
5 game. If you're adding in one place, you have to take it
6 away from the other; is that right?

7 MS. MALTAS: Objection. I think this is outside
8 his foundation.

9 THE COURT: Well, I think -- no, that's not about
10 this chart, per se. That's generally about network
11 scheduling. That's what you do, right?

12 THE WITNESS: Yeah. If the fleet is constrained,
13 you definitely have to -- you can only put it in so many
14 places.

15 THE COURT: Or you could be more efficient?

16 THE WITNESS: You could be more efficient, yes,
17 which we sometimes try.

18 THE COURT: Go ahead.

19 BY MR. MOORE:

20 **Q.** Just to make sure I understand, so it's correct that this
21 is essentially a zero sum game, you have to take from one
22 spot in order to add in another spot in this exercise; is
23 that right?

24 **A.** Based on here, that's what it looks like they did.

25 THE COURT: Just so you're all clear, so generally,

1 I view it as -- and maybe my understanding is wrong, and
2 that's what I'm telling you this. So I don't view it as
3 completely a zero sum game, because if the fleet is
4 constrained and you want to add more hours in one place, then
5 one option is to take it away from somewhere else, but one
6 option is to run the planes longer. And that might not work
7 in terms of the network scheduling, but that might. That is
8 a answer. So I don't understand the evidence to be that it's
9 conclusive that the only way, when the fleet is constrained,
10 to get hours in one place is to move aircraft at play.
11 Like -- and I'm not saying that is what this chart is, but
12 just sort of as a general -- since the question was general
13 and not specific to this, that's how I understand the
14 evidence to date.

15 MR. MOORE: Understood, Your Honor.

16 THE COURT: And that's what I understand about how
17 that works. And I tell you all that, because I'm not finding
18 anything about that at the moment, but then you all can -- if
19 that's wrong, you should -- have plenty of opportunity to
20 correct it.

21 BY MR. MOORE:

22 Q. And just to be clear with my question, so I was just
23 talking about the exercise that you were doing here, and in
24 this case, the exercise that you're doing, if you're taking
25 from one spot, you have to add it. If you're adding from one

1 spot, you have to take from another; is that right?

2 **A.** Yes. In this exercise, we said that we would have a goal
3 of basically keeping the block hours of around 1 percent
4 change.

5 **Q.** And just to follow-up on a few --

6 THE COURT: That would limit more utilization, or
7 no?

8 THE WITNESS: What did you say?

9 THE COURT: That, in some way, limits more
10 utilization.

11 THE WITNESS: Yeah, it basically would keep it at
12 the exact same.

13 THE COURT: Same. Right.

14 BY MR. MOORE:

15 **Q.** And actually, just to go follow-up on the Court's
16 questions, if we go to the utilization column, or rather it's
17 titled "Util," do you understand that to be utilization?

18 **A.** Generally, yes, but I did not make these columns.

19 **Q.** Okay. So you don't know what's reflected in these
20 columns?

21 **A.** I don't know -- I know Util generally stands for
22 utilization, but I don't know what the numbers are
23 reflecting.

24 **Q.** Okay and just looking at this document, you see that it
25 indicates --

1 THE COURT: Well, you read the chart before, right?

2 THE WITNESS: Yeah, but like the formulas for
3 the --

4 THE COURT: Oh, the underlying formulas, yes.

5 BY MR. MOORE:

6 Q. And so looking at this chart, the utilization in column Q
7 is 13.33, do you see that?

8 A. Yes.

9 Q. And that's the same in column T, as well?

10 A. Yes.

11 Q. And do you have any understanding of what affects higher
12 utilization rates for a particular plane would have on that
13 plane's performance?

14 A. Like, what do you mean by "performance"?

15 Q. If you use the plane more, does it have any effects on
16 the plane's ability to fly, long term usage of the plane,
17 anything like that? Do you have any knowledge about that?

18 A. Only generally that if the -- if you fly the airplane
19 harder, then it could age out quicker.

20 Q. Let's turn back to tab 372A, which we looked at at the
21 beginning of our discussion today?

22 A. You said 382?

23 Q. 372A. Again, these are text messages between Mr. Chad
24 Schweinzger and Mr. Anmol Bhargava and yourself. Is that
25 right?

1 **A.** Yes.

2 **Q.** And all three of you are members of the clean team for
3 American Airlines; is that right?

4 **A.** Yes.

5 **Q.** And these texts are all dated May 29th of 2020; is that
6 right?

7 **A.** Yes.

8 **Q.** And that's the same day that you received the v4 data
9 from JetBlue; is that right?

10 **A.** Yes.

11 **Q.** Let's turn to your text message with the time stamp of
12 8:22 p.m. It's on the second page of the document that
13 you're looking at. So in this message you write, "Slightly
14 scared that when we run v4 through Raven, B6 may not be rev
15 positive." Do you see that?

16 **A.** Yes.

17 **Q.** And when you say "v4," you're referring to the v4
18 schedule we've been discussing?

19 **A.** Yes.

20 **Q.** And "Raven," you're referring to the forecasting tool we
21 were discussing earlier?

22 **A.** Yes.

23 **Q.** And when you say "rev," that's referring to revenue?

24 **A.** Yes.

25 **Q.** And then Mr. Schweinzger responds to you. And we'll pull

1 that up on the screen.

2 He says, "Can you get a quick summary of adds and
3 cancels, we have the 2019 base revenue in the current Raven
4 runs, so we can get a sense for how much they are
5 cancelling." Do you see that?

6 **A.** Yes.

7 **Q.** And when he says how much they are cancelling, you
8 understand they to be referring to JetBlue. Is that your
9 understanding?

10 **A.** Yes.

11 **Q.** So he's asking you to get a sense of how much JetBlue is
12 cancelling in the v4 schedule; is that right?

13 **A.** Yes.

14 **Q.** And you liked Mr. Schweinzger's message at 8:26 p.m.; is
15 that right?

16 **A.** Yes. But the -- from my recollection, the -- this was
17 actually earlier in the day, not at 8:26 p.m.

18 **Q.** So you don't think it was -- the time stamp is correct on
19 this?

20 **A.** No.

21 **Q.** Why don't we look back at PX372, which are the original
22 documents as they were produced?

23 THE COURT: Is it the sequence that you're
24 wondering about or the actual time of day?

25 THE WITNESS: No, after my last deposition, I

1 talked to counsel and went back and looked at the calendar,
2 and we think -- or I know that these times are not actually
3 the times they had. I think they're in UTC time, not
4 Central/Dallas Time.

5 THE COURT: Oh, I see. So the sequence of the
6 texts is correct.

7 THE WITNESS: Yes.

8 THE COURT: It's just it wasn't 8:23, it might have
9 been whatever adjustment there would be between UTC and
10 Central Time.

11 THE WITNESS: Exactly.

12 THE COURT: Okay. Do you care?

13 MR. MOORE: I think the sequence is the most
14 important part, so if that's understood to be correct, then I
15 think we can proceed with that.

16 Let's go back to 372A, then.

17 BY MR. MOORE:

18 **Q.** And Mr. Pack, just to clarify, as well, while we get this
19 back up on the screen, I think you testified to this, but
20 that's an understanding that you only came to understand
21 after your deposition in this litigation; is that right?

22 **A.** Yes.

23 **Q.** And after both of your depositions, both during the
24 investigation phase and during the litigation; is that right?

25 **A.** Yes.

1 **Q.** All right. Great. And I think at least what's indicated
2 here, 8:26 p.m., and I'm just going to use those times in
3 order to orient us on this chart here, but you liked
4 Mr. Schweinzger's message; is that right?

5 **A.** Yes.

6 **Q.** And so at that point, you put together a quick estimate
7 of JetBlue's adds and cancels in the v4 schedule; is that
8 right?

9 **A.** Not that I remember, no.

10 **Q.** But you know that Mr. Schweinzger asked you to do it,
11 right?

12 **A.** Yes.

13 **Q.** And you probably did it if he asked you, right?

14 **A.** Not necessarily.

15 **Q.** Do you recall your deposition from earlier in this
16 litigation?

17 **A.** Yes.

18 **Q.** And as we discussed, you understood that you were under
19 oath when you gave that deposition?

20 **A.** Yes.

21 **Q.** If we can go to page 137. It's in the tab labeled, "LIT
22 depo."

23 **A.** What tab? Sorry.

24 **Q.** It's LIT depot, L-I-T depot. It's the second tab in your
25 binder.

1 And are you there?

2 **A.** What page?

3 **Q.** Page 138?

4 **A.** I'm sorry.

5 **Q.** No worries?

6 **A.** 138.

7 **Q.** 138, 1-3-8.

8 **A.** I'm there.

9 **Q.** And just looking at the first three lines, lines 1 to 3.
10 There's this question, "Do you think that you would -- if
11 Mr. Schweinzger asked you to do it, that you probably did
12 it?"

13 And your answer was, "I probably did it."

14 Is that right?

15 **A.** Yes.

16 **MR. MOORE:** Your Honor, we move to admit as a party
17 admission.

18 **THE COURT:** Any objection?

19 **MS. MALTAS:** No objection.

20 **THE COURT:** Admitted.

21 **BY MR. MOORE:**

22 **Q.** And I want to go back for just a moment to our discussion
23 about --

24 **THE COURT REPORTER:** Was there a number?

25 **THE COURT:** I haven't been giving numbers to the

1 deposition. I suppose I should -- you think I should be
2 numbering the -- I don't think I need to number as exhibits
3 the excerpts from the depositions that are admitted, unless
4 anyone thinks otherwise.

5 MR. JONES: No, Your Honor. I think as long as we
6 have the deposition, the page number, and the line number.

7 THE COURT: All right. So I just admitted
8 Mr. Pack's litigation deposition, page 138, lines one, two,
9 and three.

10 Go ahead.

11 BY MR. MOORE:

12 Q. All right. Let's flip to the next page of the
13 demonstrative. I want to go to Mr. Schweinzger's message
14 that's indicated here, at least, to be 10.02 p.m.

15 A. What is the exhibit number that's on?

16 THE COURT: Same exhibit that you've been looking
17 at.

18 MR. MOORE: 372A.

19 BY MR. MOORE:

20 Q. So we're at Mr. Schweinzger's message at 10:02 p.m.,
21 right?

22 A. Yes.

23 Q. And that's less than two hours after you liked his
24 message requesting the summary adds and cancels?

25 A. Yes.

1 **Q.** And in this message, Mr. Schweinzger writes, "I'm
2 completely out of ideas." Do you see that?

3 **A.** Yes.

4 **Q.** And if you look at his next two messages, he says --
5 we'll wait for them to come up on the screen. So
6 Mr. Schweinzger is writing here, "So if we show full network
7 results, no bueno." Do you see that?

8 **A.** Yes.

9 **Q.** And you understand "no bueno" to mean not good?

10 **A.** Yes.

11 **Q.** And you responded to this message. Do you see that?

12 **A.** Yes.

13 **Q.** You said, "Yeah;" is that right?

14 **A.** Yes.

15 **Q.** I want to go to Mr. Schweinzger's next message now. So
16 here Mr. Schweinzger writes at 10:03 p.m., "Based on what I'm
17 hearing here, if I was DOJ, I could easily kill any deal . .
18 . Any deal." Do you see that?

19 **A.** Yes.

20 **Q.** And then in his next two messages he writes, "No deal
21 positive. Ever." Do you see that?

22 **A.** Yes.

23 **Q.** And when he says "deal," it's your understanding is that
24 he was referring to the Northeast Alliance; is that right?

25 **A.** Yes.

1 **Q.** I want to go to your message now at 10:27 p.m.

2 MR. WALL: Could we just have some convention for
3 record that you'll say 10:27 p.m., but note that it's
4 incorrect and UTC Time is actually --

5 THE COURT: I'm happy to note. I think the record
6 is already clear, because we discussed it, but all of the
7 times in this are not -- are stipulated, as I understand, to
8 be correct in sequence, and as to the date to be correct, but
9 that the time stamp which we're going to use, which is on the
10 exhibit, which comes from the demonstrative, which comes from
11 the underlying exhibit, there may not -- it's not a
12 stipulation whether the time is correct, but it's not
13 determined that it isn't correct, so far in the record, but
14 the time which is reflected here might be UTC, rather than
15 Central Time. And so that's what the record is. And if
16 anybody wants, thinks it's material as to which time it is,
17 then they can submit evidence.

18 Is that enough?

19 MR. WALL: I missed the part right after, "I think
20 it's understood."

21 THE COURT: Go ahead.

22 BY MR. MOORE:

23 **Q.** And Mr. Pack, do you have any understanding of whether
24 UTC, that's earlier or later in the evening?

25 **A.** I think it's minus five, so like I think it's five hours

1 before.

2 **Q.** Five hours before or five hours later?

3 **A.** Sorry, like earlier in the day. So like if this is 10:00
4 p.m., it would be like 5:00 p.m. in Dallas.

5 **Q.** Okay. So I'm now looking at your message at 10:27 p.m.
6 Do you see that?

7 **A.** Yes.

8 **Q.** You write, "I think that the regulatory case for this
9 domestic JV with ATI doesn't exist."

10 Do you see that?

11 **A.** Yes.

12 **Q.** And when you say, "This domestic JV with ATI," you were
13 talking about the Northeast Alliance, right?

14 **A.** Yes.

15 **Q.** And then your message at 10:27 p.m. -- or rather,
16 Mr. Schweinzger's message at 10:27 p.m. So same minute,
17 same, both at 10:27 p.m., he agrees with you. Do you see
18 that?

19 **A.** Yes. He "arees."

20 **Q.** And you understood that to mean he's agreeing with you?

21 **A.** Yes.

22 **Q.** And then he goes on to say, "On network alone, it does
23 not exist." Do you see that?

24 **A.** Yes.

25 **Q.** Let's go to your message at 10:29 p.m. So in your

1 message at 10:29 p.m., you write, "It's going to be a
2 constant uphill battle, and we're not going to convince DOJ."
3 Do you see that?

4 **A.** Yes.

5 **Q.** And DOJ refers to the Department of Justice; is that
6 right?

7 **A.** Yes.

8 **Q.** And ultimately, the clean team provided the economists at
9 Compass Lexecon with the Raven outputs from the v2 schedule;
10 is that right?

11 **A.** Yes.

12 **Q.** But the clean team did not provide the outputs for the
13 2019 v4 schedule; is that right?

14 **A.** I don't think that was done in Raven.

15 **Q.** So you didn't provide them. Obviously, if it wasn't done
16 in Raven, you didn't provide them to the economists, right?

17 **A.** Correct.

18 **Q.** And is it your understanding that the NEA was signed in
19 July of 2020; is that right?

20 **A.** I think so, but I don't know for sure.

21 **Q.** Summer of 2020. Does that sound about right?

22 **A.** Yes, summer.

23 **Q.** So about a month or so after these text messages we've
24 just been reading; is that right?

25 **A.** Yes.

1 MR. MOORE: Your Honor, I have no further questions
2 at this time. I pass the witness.

3 THE COURT: All right. Cross-examination.

4 MS. MALTAS: We all squared away? All right.

5 THE COURT: Yes.

6 MS. MALTAS: Thank you, Your Honor.

7 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT AMERICAN AIRLINES**

8 BY MS. MALTAS:

9 Q. Mr. Pack, when you started working with the clean time
10 team, how long had you been with American?

11 A. Three years.

12 Q. Did you join American out of college?

13 A. Yes.

14 Q. And what was your position in the spring of 2020.

15 A. I was a senior analyst and long-range planning.

16 Q. And who did you report to?

17 A. Joe Santilli.

18 Q. And what is your current position at American?

19 A. I'm a senior manager in a commercial planning and
20 analysis group.

21 Q. And who do you report to now?

22 A. Also now Joe Santilli.

23 Q. In their opening statement in this case, plaintiffs
24 described you to the Court as an executive at
25 American Airlines; is that correct?

1 **A.** I think so.

2 **Q.** Have you ever been an executive at American Airlines?

3 **A.** No.

4 MR. MOORE: Your Honor, objection. That misstates
5 the statement, opening statement.

6 THE COURT: Well, the record is whatever it is in
7 the opening statement. So to that extent, I'll overrule it.

8 MS. MALTAS: We're happy to rely on the record.

9 BY MS. MALTAS:

10 **Q.** Mr. Pack, why was it called the clean team?

11 **A.** Because we were supposed to be on an island not talking
12 or interacting with other people that would be at our
13 company.

14 **Q.** And what do you mean by being on an island?

15 **A.** Because like we were isolated, we could exchange
16 confidential information with each other and work together.

17 **Q.** And who else from American was on the clean team?

18 **A.** Anmol Bhargava and Chad Schweinzger.

19 **Q.** Do you recall who was on the clean team for JetBlue?

20 **A.** Dave Fintzen and Derek Klinka. There were two Michelles,
21 but I don't know their last names, and a Clare.

22 **Q.** Did anyone else other than representatives of American
23 and JetBlue attend clean team meetings?

24 **A.** Yes.

25 **Q.** And who else attended?

1 **A.** Counsel.

2 **Q.** And what was counsel's participation like on the clean
3 team meetings?

4 **A.** They made sure that we stayed on topic and weren't
5 violating any laws or talking about things we weren't
6 supposed to talk about.

7 **Q.** Did representatives from Compass Lexecon attend clean
8 team meetings?

9 **A.** Not that I'm aware of.

10 **Q.** Did counsel give you direction or instructions on the
11 clean team's work?

12 **A.** No.

13 **Q.** Did Compass Lexecon give you direction or instructions on
14 the clean team's work?

15 **A.** No.

16 **Q.** So I'd like to focus on the v2 optimized schedule that
17 the clean team made and that you talked about with Mr. Moore.

18 So just generally, what was the process that you
19 went through to evaluate the partnership and come to this
20 optimized schedule?

21 **A.** Well, we started at a really high level. And because the
22 project was very gray when we -- at least when I joined the
23 team, so we started from what first -- what would a
24 partnership look like, what would we actually do. And then
25 we moved into a little bit more granular on the network side,

1 and we're like okay, what principles, what do we want to
2 accomplish? What goals do we want to seek out and execute on
3 in the NEA.

4 **Q.** So let's go ahead and look at DX37, which is also PX68,
5 but we'll be using the color version on DX37, and I believe
6 this is already entered into evidence.

7 And we'll just cover this briefly, Mr. Pack, but
8 what is this document?

9 **A.** This is an internal document that we used to communicate
10 with our executives.

11 **Q.** And did you contribute to the making of this document?

12 **A.** Yes.

13 **Q.** So if you could please turn to slide 2. The title of
14 this slide is, "Project Garland is focused on creating a
15 post-COVID position in NYC/BOS that generates competitive
16 consumer benefits compared to DL and UA."

17 What did you mean with this title?

18 **A.** It's super high level, but it basically means that we
19 want to have a position in the Northeast that is basically
20 the same or rivals our competitors that are there.

21 **Q.** And there are three goals that are listed. Address AA/B6
22 incomplete customer proposition relative to DL, UA, and NYC,
23 maximize customer value and connectivity in JFK, LGA, and
24 Boston, improve overall customer relevance, competitiveness
25 in the Northeast region.

1 And what did you mean with these goals?

2 **A.** Those are maybe a little bit more three technical or more
3 in detailed goals based on the title.

4 **Q.** And how did these compare with the goals and the
5 strategies that you utilized in the clean team?

6 **A.** They were basically the same.

7 **Q.** So in the next sentence, there is, "Approach." The slide
8 reads, "Small AA/B6 clean team evaluating a 'metal neutral'
9 agreement that incentivizes a more robust network and
10 customer experience."

11 What did you mean there?

12 **A.** Well, metal neutral basically means that you have
13 American's airplanes and you have JetBlue's airplanes. And
14 we were putting together, at least in the clean team, this
15 schedule that didn't really pay attention to who was
16 operating what. We wanted to basically say this airplane
17 would be best served in this market, or this carrier could
18 best serve that market, based on like their airplane
19 configurations, their brand, things like that.

20 **Q.** And is this consistent with your understanding of what
21 you were trying to accomplish with the clean team?

22 **A.** Yes.

23 **Q.** Finally, the last section is, "Output." And it
24 says, "Move quickly to create a joint proposal that optimizes
25 our joint network, and contains revenue sharing and capacity

1 governance to ensure mutual benefit for the carriers and
2 enhanced experience for our customers."

3 And what did you mean there?

4 **A.** Well, the first part was we were under a lot of stress to
5 do something quickly, because we were in COVID. So we were,
6 I think, maybe two months until we were done with the clean
7 team work, and we wanted to do something very quick. And
8 basically, so that post-COVID, we could go execute and
9 implement the alliance, such that we would be ready when
10 demand did return.

11 **Q.** Let's turn to slide 7, please. So the title here is, "To
12 create customer benefit, the clean team optimized the
13 combined network, maximizing connectivity, and unlocking
14 value," and what does that mean?

15 **A.** Basically like this is a little bit more detail of what
16 it actually meant on the airport level, like what did the
17 network actually do. And we wanted to make sure that the
18 combined network would basically be very similar to Delta and
19 United and their networks in the Northeast, and that we would
20 be able to hopefully convince people to fly on us and create
21 new O&Ds through connectivity.

22 **Q.** And how did the clean team go and actually build the
23 optimized schedule?

24 **A.** So we took those principles and goals that we talked
25 about before, basically, and then we sat down, and literally

1 looked at all markets that we serve from those two markets,
2 and what other airlines did. We talked about, you know, how
3 we would go find new markets, what markets we should be in
4 and what our competitors are in. And what our frequencies
5 should look like in all of those markets together.

6 **Q.** And turning back to slide 7, what's reflected on this
7 chart?

8 **A.** This is three airports.

9 **Q.** Okay. And what is provided about the three airports?

10 **A.** Basically, like some key features, what we did -- what we
11 thought the customer benefit was especially against the
12 competitor, and then basically how much more capacity we
13 would be able to put into the -- into the NEA and also how
14 much revenue we'd get.

15 **Q.** So let's start with LaGuardia. What are the key features
16 and considerations that you took into account in building the
17 optimized schedule for LaGuardia?

18 **A.** They are really like two, big things, I would say. The
19 first one is in LaGuardia, we were very smaller than other
20 carriers, mainly Delta. So we said, okay, what markets do we
21 need to serve that they are serving. And we had slots at
22 American that, you know, we're flying on regional jets,
23 they're flying to small cities, which are great, but kind of
24 underutilized as a slot, a little bit. So we basically
25 wanted to take those slots, bring JetBlue in, JetBlue could

1 go fly those slots on big airplanes, and they could go launch
2 new markets like New Orleans or something like that, where
3 they're a much bigger airplane and they could do so
4 profitably, whereas we couldn't.

5 And then the second thing was that those regional
6 jets that we talked about, the ones that were remaining for
7 us, we would at least make sure that they were all flying on
8 a dual cabin, which means that we would have a first class on
9 there, too.

10 **Q.** And how did that unlock value for LaGuardia?

11 **A.** Oh, it definitely increased capacity.

12 **Q.** So let's take a look next at JFK. What were the key
13 features in considerations that you took into account in
14 building the optimized schedule for JFK?

15 **A.** JFK is a little different than LaGuardia, because it
16 doesn't have the slot -- not slot, but perimeter rule, so we
17 could fly transcons. So things like transcons are way more
18 important to JFK. So together we wanted to make sure that we
19 had a combined schedule like to the West Coast, we would have
20 lie-flat seats, we would have high frequency, and those
21 frequencies wouldn't be on top of each other. They would be
22 structured such that the American has a flight at 7:00, and
23 JetBlue has a flight at 8:00, and American has another flight
24 at 9:00. And so we wanted to make sure that all of those
25 patterns were really good and that we were present in all of

1 those markets and we were offering a cohesive product.

2 But then for American, another thing that we tried
3 to do at JFK is increase domestic connectivity, because we
4 struggled to launch long-haul flights from JFK, so we could
5 utilize JetBlue's domestic network to create connectivity and
6 take passengers from smaller cities on to long-haul.

7 **Q.** And finally Boston, what were the key features and
8 considerations that you took into account in building the
9 optimized schedule in Boston?

10 **A.** A lot of it was from JetBlue. They -- during the clean
11 team, they were asking us to -- they wanted access, they
12 wanted to say, hey, we've got these plans, but we cannot
13 execute them. They wanted to go fly all of the cities that
14 delta was launching, and so they liked that we could give
15 them gates, but also they could tap into cities where we were
16 strong, like small, Midwest, mid market cities, where
17 American has a strong presence, so it would allow us to serve
18 Boston, but then it would also allow JetBlue to increase
19 Boston considerably.

20 **Q.** And you spoke with Mr. Moore about using September 2019
21 as the baseline for the v2 optimized schedule. How did you
22 pick September 2019?

23 **A.** It wasn't too high and it wasn't too low. Like if we
24 would have used July, it would have been a bit crazy, because
25 that would have been a lot of demand, there would have been a

1 lot of capacity, and revenue would be really, really high.
2 So we chose September, we thought, because it was more
3 conservative, demand isn't really high in September and
4 revenue isn't really high in September, and that's what we
5 used to represent the full year.

6 **Q.** And why 2019?

7 **A.** Because we were doing this in spring of 2020, and it was
8 like the most recent comfort that we had of a schedule.

9 MS. MALTAS: You can take this down.

10 BY MS. MALTAS:

11 **Q.** All right. You also spoke with Mr. Moore about the
12 inputs that you used to create the optimized schedule that is
13 v2, and one of those inputs is fleet.

14 So why did you use new planes or assume new planes
15 in putting together the v2 optimized schedule?

16 **A.** Well, for American they enable a lot of things, like
17 using the XLR, you would be able to go launch a lot of
18 flights that wouldn't have otherwise been profitable on a
19 different airplane, for example, and this is during COVID.
20 And from 2019, I can only speak for American, but we retired
21 a lot of airplanes, basically in this month that we were
22 doing this, we lost like the 330, 75, and 767. So the
23 present day fleet also isn't representative. So we knew it
24 was going to happen postCOVID in the future. So we wanted to
25 make sure to use the fleet that we knew we were going to have

1 in the future.

2 **Q.** So if you had used the 2019 fleet in v2, would you be
3 using planes that American no longer possessed?

4 **A.** Yes.

5 **Q.** All right. Mr. Moore also asked you about the v4,
6 another schedule that the clean team worked on, and what is
7 v4?

8 **A.** V4 is a schedule where we said, hey, let's just keep
9 everything to 2019 fleet block out. It's really the number
10 of block hours that we keep constant.

11 **Q.** And how is v4 different than v2?

12 **A.** Basically that the block hours are the same, but the
13 fleet is different, because we have airplanes that we no
14 longer have. And market presences were -- as they were in
15 2019, not as they were necessarily how we thought in the
16 future.

17 **Q.** Okay. Was v4 intended or designed to replace v2 as an
18 optimized schedule?

19 **A.** No.

20 **Q.** Why not?

21 **A.** Because it doesn't represent what we designed the NEA to
22 be.

23 **Q.** And what do you mean by that?

24 **A.** Like we designed the NEA to utilize things that we knew
25 we were going to have; be a postCOVID player and take

1 advantage of things that we knew were going to happen
2 postCOVID.

3 **Q.** Could v4 and does v4 show what the NEA could do in the
4 future?

5 **A.** No.

6 **Q.** Why not?

7 **A.** Because it's constrained to a historical fleet.

8 **Q.** So let's take a look at PX297 that plaintiff showed you,
9 and we'll turn to your e-mail on page 2. And when you
10 said -- and this is something that Mr. Moore showed you, as
11 well, and we'll talk about it in more detail. You
12 wrote, "Following up on the v4 schedule, the schedule serves
13 as our best guess as to what could have happened in 2019 if
14 AA/B6 had the partnership that we are jointly proposing."

15 And what did you mean by this?

16 **A.** Basically, if we would have tried to go back in time,
17 maybe we were curious to see like what it would look like.
18 So we kept those block hours the same and we guessed, hey,
19 what would we maybe do, what would we not be able to do, and
20 how could it be different.

21 **Q.** And you also say, "The key difference with this compared
22 to B2 is we have to fund aircraft and keep resources
23 neutral."

24 And what did you mean there?

25 **A.** Just that the block hours would be the same.

1 Q. And is this that a realistic way to model the NEA?

2 A. No.

3 Q. And so why did you do it?

4 A. I think for me it was a thought exercise and curious.
5 And also it was what I was most familiar with. It was hard
6 to predict. We were in the middle of COVID. So for me, it
7 was like a thought exercise in curiosity.

8 Q. Let's turn to PX397. And again, we'll use the
9 demonstrative that plaintiffs had used.

10 372. Sorry.

11 A. I don't know if I have that.

12 Q. It's in the other binder.

13 A. Oh.

14 Q. And it will be just the demonstrative that's at the front
15 of the exhibit.

16 All right. If we look at the first text message
17 which Mr. Moore showed you, before we went to lunch, it is
18 dated here as 4:38, but we now know that to be 11:38 a.m.

19 What was going on when you were receiving and
20 sending these text -- these first text messages in the 11:38
21 time?

22 A. We were -- oh, the meeting we were in was an all hands,
23 which is like a department-wide meeting that we have for
24 network.

25 Q. And why were you texting while you were in all hands

1 meeting?

2 **A.** Because we were working on, basically, all stuff for
3 Garland that day and that week, because there was a meeting
4 on Monday that Vasu had to prepare for. So in this case, I
5 was making the profitability estimate of the NEA for him.

6 **Q.** And was it common for you and Chad and Anmol to talk or
7 text when you were on phone calls?

8 **A.** Yes.

9 **Q.** If you can turn to the first text message that Mr. Moore
10 showed you after lunch, and that one is dated here 8:22 p.m.,
11 but we know that to be 3:22 p.m.?

12 MR. MOORE: Your Honor, I will just object to the
13 extent that he didn't testify to that prior to this trial.
14 He testified differently at his deposition and also this is
15 information that counsel never raised to us. They never told
16 us that this was, in fact, incorrect. This is exactly how it
17 was produced to us. So I would object to this continued --

18 THE COURT: Explain this to me, again, Ms. Maltas.

19 MS. MALTAS: Excuse me?

20 THE COURT: Explain it again.

21 MS. MALTAS: So when you take a cell phone and you
22 process it, it was collected from the various custodians with
23 the phones being in their Central Time. However, our vendor
24 when they processed the cell phones and produced the text
25 messages to the DOJ, produced them in UTC. So it's

1 simply that's actually a common way to do a text message
2 productions.

3 THE COURT: So is the dispute just about the
4 difference in the hours?

5 MS. MALTAS: Yes. It's just five hours -- when you
6 look at the text message --

7 THE COURT: Is there any material significance,
8 since everyone agrees to the sequence?

9 MR. MOORE: Well, Your Honor, as originally
10 produced to us by their counsel, these were text messages
11 that were occurring late at night during a frenzied meeting.
12 And that's how Mr. Pack testified to it during his
13 deposition.

14 We were never told about this change.

15 THE COURT: I can't believe he said 8:00 p.m. was
16 late at night. He's probably younger than that.

17 MR. MOORE: Well, Friday night, 10:00 p.m.

18 THE COURT: It's not late at night for me.

19 MR. MOORE: Fair. But it continued after
20 10:00 p.m. But regardless, we didn't learned, weren't told
21 about this by counsel until today. We learned about it at
22 trial.

23 MS. MALTAS: And we do understand that. Honestly,
24 it was something that just was not --

25 THE COURT: The part you just learned about -- the

1 only -- I'm still -- the significance is evading me, other
2 than what this means is that he was texting during a meeting.

3 MS. MALTAS: There really is no significance to the
4 time, except for as, you know, Mr. Pack will testify to, they
5 were working during the workday. They were texting during a
6 variety of phone calls. And some of the context and what
7 they're actually talking about in the text messages is
8 informed by the phone calls they were on, which we know to
9 happen because we know what time it was occurring.

10 MR. WALL: That's the point, Your Honor. The
11 representations have been made about this being late at night
12 with executives and everything like that, but it's the
13 relationship between they actually --

14 THE COURT: Who said it was late at night?

15 MR. WALL: Mr. Jones in his opening statement said
16 frenzied texts late at night by high-level executives, or
17 something like that. And the point is, it has become
18 apparent, this happening in the middle of the workday, and it
19 is in relation to meetings that Ms. Maltas is going to talk
20 about and the subject matter of those meetings.

21 MR. JONES: Your Honor, relying on the date stamps
22 as produced to us, as we understood --

23 THE COURT: This is the way I look at it. (A),
24 there's nothing wrong with your reliance, on what you relied
25 on. I don't see there is anything wrong with that. It was

1 fine.

2 I would be stunned if my judgment turned on whether
3 these texts were during the frenzied, early evening meeting
4 at 8:22 p.m., or a late morning meeting at 11:00 a.m., or
5 that they -- whatever you said about a frenzied meeting in
6 the opening is gone because it wasn't a frenzied late night
7 meeting.

8 So they learned it. I think you can go ahead.

9 Like an observation that I will make, you've all
10 done a great job of preparing this case. It's a very well
11 prepared case. And I know it's a civil case, but even in a
12 civil case, in fact, there are things -- like, a trial is not
13 just a presentation of excerpts from the discovery, and
14 things happen. People learn things and things change, and
15 it's a live event.

16 And so this -- and whether they should have told
17 you about it when they learned about it or when they
18 learned about it or the significance of that, I don't know.
19 But I don't see at the moment any significance.

20 So to the extent that you're objecting to -- and I
21 do think that I should be getting the facts right, even a
22 minor fact like this, so I think you can go forward as it's
23 happened.

24 And if you think there's something that you want to
25 do at some point because of you just learned about it, that's

1 perfectly fine and you can bring that up whenever.

2 So go ahead.

3 MS. MALTAS: Thank you, Your Honor.

4 I'm not exactly sure what my last question was,
5 but --

6 BY MS. MALTAS:

7 **Q.** If you could take a look, Mr. Pack, at your text message
8 that starts, "Slightly scared."

9 **A.** Yeah.

10 **Q.** And you say, "Slightly scared that when we run v4 through
11 Raven, B6 may not be rev positive because they are cancelling
12 a lot of existing markets, LGB, MCO for which it is using
13 good data, and trading for new markets which haven't been on
14 B6 metal. Raven might screw that up because it can't stim
15 well."

16 What did you mean by that text message?

17 **A.** Yeah. Well, so, first, "stim" means stimulate. And then
18 basically what we're doing in v4, is B6 had moved flying, as
19 I talked about earlier, from parts of New York to other parts
20 of New York, like the NEA, and they were exchanging the
21 markets that they had flown. And we get -- Raven gets all of
22 its data from public sources like DOT, so it can see how many
23 people were on the market, what were they paying. And so
24 that's how the forecaster works.

25 When you put a new market in, Raven isn't so good

1 at trying to figure out what's going to be there, because
2 there isn't a lot of good data, especially if it's a new
3 nonstop market. So it usually requires manual intervention
4 to go in --

5 Like if we were forecasting a new market, for
6 example, we would run Raven, and then the planner would go.
7 And then we would say, "We have this O&D, and I think we can
8 get more people," and so forth.

9 We didn't do that in this case because there were a
10 ton of new markets, but also because these were B6 markets
11 and not Americans'. So I didn't want to mess with their
12 data.

13 **Q.** So does Raven overinflate revenue ever?

14 **A.** Not that I'm aware of.

15 **Q.** So it's just a question of undercounting the revenue?

16 **A.** Yes. In this case, Raven is pretty conservative, because
17 it can't see data.

18 **Q.** So the next text that Mr. Moore showed you is from
19 Mr. Schweinzger, where he asked you to run a summary of adds
20 and cancels. And did you actually do that summary of adds
21 and cancels?

22 **A.** I don't remember. And after my last deposition, I cannot
23 find that I sent him it.

24 **Q.** All right. If you can look to, again --

25 THE COURT: I don't know, Mr. Pack, you're not

1 doing what the boss says, and you're texting during the
2 meetings.

3 THE WITNESS: Yeah, I know. I learned my lesson.

4 THE COURT: Redemption is important.

5 BY MS. MALTAS:

6 Q. And then as Mr. Moore showed you, Mr. Schweinzger
7 responded in a later text message, which occurred an hour and
8 a half later, "I'm completely out of ideas." So if we show
9 full network results -- no bueno -- yeah.

10 "And then based on what I'm hearing here if I was
11 DOJ, I could easily kill any deal, any deal."

12 So the first question is, is this a continuation of
13 the same conversation you were having before?

14 A. No.

15 Q. And what was happening during this conversation?

16 A. We were in a meeting with Latham and Compass.

17 Q. Okay. And how do you know -- is there anything about
18 this text message that you can tell you were on a call?

19 A. Yeah, because Anmol goes on and he talks about he had to
20 drop and constantly asks if the call is over or if it keep
21 son going.

22 Q. Without revealing anything privileged, what generally
23 were you discussing on this call?

24 MR. MOORE: Objection, Your Honor, counsel has
25 withheld significant amounts of information about the

1 privilege -- claimed privilege overall these conversations
2 with compass repeatedly during discovery. It's been an
3 ongoing dispute. And now she's attempting to elicit some
4 information from the meeting which they've withheld
5 throughout discovery, so we object to now introducing this
6 information that we can't probe through discovery.

7 MS. MALTAS: Your Honor, we have not withheld
8 anything about v4, currently, through discovery, and we have
9 not withheld anything about the work that the clean team did
10 in its regular course of business.

11 THE COURT: How about this conversation?

12 MS. MALTAS: About this conversation, this is the
13 beginning, as Mr. Pack will say, of the regulatory process,
14 where he is turning over the v2 information to Compass and
15 Latham to start working with. At that point, it does become
16 privileged. This is starting to work on the regulatory
17 process --

18 THE COURT: But the conversation is a privileged
19 conversation.

20 MS. MALTAS: The conversation is privileged. It's
21 only important because of how they've attempted to
22 contextualize these text messages and claim what they mean
23 and he's going to explain what they actually mean.

24 THE COURT: But you can ask him what the text
25 means, but if you ask him what the subject -- what was the

1 topic of discussion with the lawyers, then isn't that
2 privileged?

3 MS. MALTAS: I don't think that he has to say any
4 advice or information that he learned on a call that's
5 actually privileged to just say what he was providing, which
6 Mr. Moore has already asked, did you provide v2 to Compass?
7 Yes, this is the call.

8 THE COURT: So what's the exact question?

9 BY MS. MALTAS:

10 Q. The exact question is, what was the general topic of the
11 call?

12 MR. MOORE: And Your Honor, I would just add that
13 we actually have a meeting -- we have a dispute with counsel
14 about where they claw back a portion of the subject line that
15 stripped it of its meaning, and that's the type of privilege
16 claims they've been asserting during discovery and that's why
17 we're here. I mean, if they want to produce all of those
18 documents, we're happy to take that in the alternative, but
19 we've been denied that up until now.

20 MS. MALTAS: Your Honor, that disputed calendar
21 invite is in evidence as a PX right now, as it was produced
22 by JetBlue. So it's --

23 MR. MOORE: The redacted version is in evidence
24 right now.

25 MR. DOIDGE: Your Honor, if I may dispute that

1 briefly. That's actually not accurate. There were two
2 meetings that day. There was one meeting at JetBlue between
3 Compass. There was another meeting between American and
4 Compass. JetBlue has an asserted privilege with respect to
5 the meeting between Compass and JetBlue, and that meeting has
6 a subject line that says "counterfactual." The separate
7 meeting that Mr. Pack attended, on the same day, but at a
8 different time, has been withheld. We have the meeting
9 invite, but as Mr. Moore indicated, the subject matter has
10 been redacted.

11 THE COURT: The subject line.

12 MR. DOIDGE: Yes.

13 THE COURT: What about that? If they get the
14 subject of the meeting, how can you get the topic of the
15 discussion.

16 MR. WALL: Just one point. This is weird. Among
17 other things, Dr. Israel, who is a part of this call,
18 testified at his deposition about what the general subject
19 matter was, and that it dealt with counterfactuals that could
20 come up in the regulatory process, so --

21 MR. DOIDGE: If I could speak to that, Your Honor.
22 That has been our position all along, that Dr. Israel did
23 rely on these things, and that they should be producing, in
24 total, the communications that the clean team was having with
25 Compass.

1 MR. WALL: Dr. Israel --

2 MR. DOIDGE: They are now selectively attempting to
3 elicit some information that was exchanged between Dr. Israel
4 and members of the clean team, while continuing to withhold
5 other aspects.

6 MR. WALL: Dr. Israel testified that the purpose of
7 this analysis and the only reason that B4 comes into it, from
8 our perspective, is to anticipate an argument, correctly, I
9 might add, that the DOJ would make, that you had to hold the
10 fleet constant as a counterfactual. And --

11 THE COURT: But did Dr. Israel testify about the
12 meeting.

13 MR. WALL: Well, we are not planning on having --

14 THE COURT: Not that you were planning on, but did
15 he testify?

16 MR. WALL: Yes.

17 THE COURT: He talked about the discussion in this
18 very meeting that we are discussing?

19 MR. WALL: Yes, he was asked at his deposition,
20 what was this about? And he testified that it was about
21 this -- I don't want to go on to characterize what he said,
22 because he's going to testify, they can ask him what he
23 testified.

24 THE COURT: Sure.

25 MR. WALL: But he did reveal --

1 THE COURT: What he viewed to be the topic of the
2 meeting.

3 MR. WALL: Yes. Yes.

4 MR. DOIDGE: And Your Honor, if I can just speak to
5 that. This is a classic sword versus shield. Yes,
6 Dr. Israel testified to some degree about conversations he
7 had. And Dr. Israel gave his impression of those
8 conversations. We are permitted, or we should be permitted,
9 to test the veracity of his descriptions of those meetings,
10 especially since he's so heavily relying on his
11 characterizations of what the clean team told.

12 MR. MOORE: Your Honor --

13 MS. MALTAS: And I do think that this has gotten
14 rather far afield, and I do think it's also a sword versus
15 shield issue. Mr. Moore got up and put a series of text
16 messages in front of Mr. Pack. He read them into the record,
17 did not ask him any questions, did not elicit any testimony,
18 and tried to draw inferences about --

19 THE COURT: Why don't you just ask him about what
20 these things mean to him, and leave it at that --

21 MS. MALTAS: Okay.

22 THE COURT: -- without getting into the meeting?

23 MS. MALTAS: It is going to require him to say
24 something that they were talking about from a meeting. So it
25 is -- there's an element of unfairness to say that they can

1 misconstrue text messages, and then we can't defend it
2 ourselves.

3 Because what was happening is he was in a meeting
4 with Compass, and the problem is, is that then that
5 misconception just stays on the record or they're threatening
6 subject matter waiver if we try to explain it.

7 MR. MOORE: And Your Honor, just to be clear, we
8 were trying to ask Mr. Pack about his conversations with
9 Compass during his deposition, and he was instructed not to
10 answer on the basis of privilege. So I think that now they
11 can't get into this discussion about what his conversation
12 with Compass is. They have refused to allow us to probe that
13 prior to trial.

14 THE COURT: I think you can ask him what he thinks
15 these things mean, but if you -- the privilege is for you.
16 Right? You have the privilege. Whatever privilege you have,
17 you have. And you can choose to assert the privilege or not
18 assert the privilege. It sounds like you've asserted the
19 privilege.

20 MS. MALTAS: Right.

21 THE COURT: So if he goes into the -- if you elicit
22 the privileged information, if, in fact, it's privileged
23 information, they can argue it stands for whatever that
24 stands for and it goes as far as it goes. But I don't --

25 As to whether they're misconstruing the text or

1 what the texts are about, you can ask him what they were
2 about and he can just deal with that. And if he goes beyond
3 that, we'll cross that bridge when you get there. But I
4 think for the moment, you should stay away from what the
5 topic of the meeting is.

6 MS. MALTAS: That's excellent, Your Honor. I
7 personally do not think that Mr. Pack need to reveal anything
8 privileged in order to provide this contextualization and
9 explanation of the text message. My warning to him was only
10 to actually warn him to please not go outside of that.

11 THE COURT: Do you have an objection -- I guess
12 what I'm wondering is, if he's simply explaining his view,
13 what's the privilege issue? I understand you might have an
14 ongoing issue with that issue that you can bring to me or
15 not, but as to these questions --

16 MR. MOORE: Well, at this time, she's trying to
17 introduce -- elicit testimony.

18 THE COURT: Well, she's not asking that question
19 anymore. She's going to ask a different question.

20 MR. MOORE: Okay. I'll hear the next question, and
21 then maybe object.

22 THE COURT: There you go. Fine.

23 Go ahead.

24 BY MS. MALTAS:

25 Q. All right. So first thing's first. When you're looking

1 at Mr. Schweinzger's text to you, was he responding, to your
2 recollection, to anything that had to do with v4?

3 **A.** I don't think so, no.

4 **Q.** Was he responding in any way to any work or analysis that
5 you had sent him?

6 MR. MOORE: Objection, Your Honor. Calls for
7 speculation.

8 THE COURT: As you understood it.

9 THE WITNESS: Yeah, you'll have to ask him to make
10 sure, but not as I understood it, no.

11 BY MS. MALTAS:

12 **Q.** What did you understand him to be saying in these text
13 messages?

14 **A.** That he is frustrated and because of the call we were on.

15 **Q.** And generally what -- did you share his frustration?

16 **A.** Yes.

17 **Q.** And generally, what were you all frustrated about?

18 **A.** We had been working on this project for a while. This
19 was the meeting that was set up to basically ship everything
20 off and basically say it's done, to you guys and to Compass.
21 And on the call, we were hearing that --

22 MR. MOORE: Your Honor, I think this is about to
23 get into the same issue that we were just discussing.

24 THE COURT: It's up to you whether you want him to
25 keep going.

1 MS. MALTAS: Go ahead.

2 THE WITNESS: We were hearing that this -- we were
3 basically going to be attacked by DOJ. This was going to be
4 very, very, very hard on to get across and for people to
5 understand.

6 BY MS. MALTAS:

7 Q. All right. So let's take a look at your next text
8 message that Mr. Moore showed you. And plaintiffs' ask you
9 about the first sentence, where you said, "I think that the
10 regulatory case for this domestic JV with ATI doesn't exist."

11 Just to start with, at this point in May 2020, what
12 experience did you have with making a regulatory case to the
13 Department of Justice for a deal?

14 A. None.

15 Q. At this point, were you personally engaged in trying to
16 make a regulatory case for the NEA?

17 A. Other than providing documents, no.

18 Q. And I want to be very clear for the Court. When you were
19 saying that there was no regulatory case, were you saying
20 that there was no benefits provided by the NEA?

21 A. No, that's not what I meant.

22 Q. Were you saying that there's no way to quantify the
23 consumer benefits provided by the NEA?

24 MR. MOORE: Objection, Your Honor, these questions
25 are leading.

1 THE COURT: Sustained as to the form.

2 BY MS. MALTAS:

3 Q. What were you saying?

4 A. Basically that this was so novel, it's so gray. And on
5 this call, we were basically being hounded that we are going
6 to get attacked. How can this be explained? What is this
7 thing? And that was going to be really, really hard to get
8 across, and the DOJ is not going to like it. And so for me,
9 it was easier, like, you might as well merge with somebody,
10 because the counterfactual and the simplicity of what the
11 deal is is you either merge or you don't merge.

12 Q. And what did you mean with your reference to an IAG
13 America's merger, that it's easier to measure consumer
14 benefits and can promise LCC benefits and the counterfactual,
15 we don't merge?

16 A. Because IAG, which is International Airlines Group, which
17 is a European holding company of airlines, they own a couple
18 of different airlines and they don't necessarily merge their
19 brand, but they are all part of the same company, so it would
20 be easier to merge and say this is what it is, rather than
21 have this NEA gray area.

22 Q. And let's turn to the next text message in time, please.
23 You say, "These people don't even know how to handle this,
24 imagine how people at DOJ are going to think." And what did
25 you mean?

1 **A.** Well, on the call, it was just hard to -- we were being
2 constantly hounded that this was hard to understand and
3 people aren't getting it, and they're asking lots of
4 questions about what this is and what we did. And I think I
5 felt, while our team doesn't get it, I'm pretty sure it's
6 going to be hard for outsiders to understand.

7 MS. MALTAS: And you can take this down.

8 BY MS. MALTAS:

9 **Q.** At that point, what did -- how did you feel about what
10 you had accomplished with v2 and with this project?

11 **A.** Personally, I was so excited, because it was like two
12 months of work that I thought was pretty cool, and I got to
13 leave my day job to go do it. And there was a lot of work
14 and it was super, super novel. Like I wanted to make my
15 colleagues at other airlines jealous that we did this thing,
16 and it was so creative, and we had finally found a solution
17 to how to make the Northeast be profitable and to compete,
18 because it's been rubbed in our faces for so long that we had
19 nothing, and we had a really hard time against Delta and
20 United, so I felt great.

21 **Q.** And just turning briefly to one last topic that Mr. Moore
22 talked about with you, and that's Philadelphia.

23 So with regard to Philadelphia, what is your
24 understanding of American's current plan for Philadelphia?

25 **A.** That it be a hub.

1 **Q.** And what is -- what role does Philadelphia serve in
2 American's network?

3 **A.** I would say two. One is that it allows us to connect
4 like all of these small dots in New England really well,
5 which are -- have high population density. And then the
6 second is it can act as a transatlantic gateway to a lot of
7 smaller cities that we have in the Midwest. And midAtlantic
8 states, many of which we don't fly from, from other places or
9 other hubs that we have.

10 **Q.** To your knowledge, is American planning to reduce it's
11 flying to Philadelphia long term because of the NEA?

12 **A.** Not to my knowledge.

13 **Q.** To the extent there were any network plans that plaintiff
14 showed you showed decreased flying in Philadelphia, why is
15 that happening?

16 **A.** I would say a couple of reasons. If it's -- especially
17 in the next couple years, it's probably likely due to a
18 regional pilot shortage, and it could also be because we
19 don't have slots there.

20 MR. MOORE: Objection, Your Honor. I move to
21 strike that answer. He just said I think. He sounded like
22 he was speculating about as to the reasons.

23 THE COURT: I don't think that's speculation by him
24 saying, "I think." I think that it's clear that this witness
25 has some insight into network scheduling, and it's clear that

1 he's not the person who constructs the network schedule, and
2 wouldn't have authority or potentially complete insight into
3 the whole scope, so that goes to the weight of what he would
4 say, but I don't think it's speculation. So overruled.

5 Go ahead.

6 MR. SCHWED: I have no further questions. I'll
7 pass the witness.

8 THE COURT: Anything else? Or redirect?

9 MR. MOORE: Yes, Your Honor.

10 May I proceed, Your Honor?

11 THE COURT: Yes, of course.

12 **REDIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF USA**

13 BY MR. MOORE:

14 **Q.** Mr. Pack, I want to go back to DX37, which you just
15 discussed with Ms. Maltas. Let's go to slide 7.

16 So one of the things that you were discussing with
17 Ms. Maltas on this page is that the NEA might enable the --
18 you, American, and JetBlue to exchange slots in order to
19 increase flying; is that right?

20 **A.** Yes.

21 **Q.** But let's flip back to page 5 of this deck, and looking
22 at scenario 2, East Coast International Alliance. Do you see
23 that row?

24 **A.** Yes.

25 **Q.** Do you recall that we discussed that earlier?

1 **A.** Yes.

2 **Q.** If we look at the considerations column, the first bullet
3 says JFK, LGA/BOS slot swap possible," right?

4 **A.** That's what it says.

5 **Q.** So a slot swap was possible even without having revenue
6 sharing and capacity coordination, right?

7 **A.** As listed here, it is possible, and it says there's no --
8 in this case, there's no capacity governance, then possible,
9 yes.

10 **Q.** And so you could give those slots to JetBlue, or lease
11 those slots to JetBlue, so that they could increase the
12 flying without having to have capacity coordination and
13 revenue sharing, right?

14 **A.** Well, it may not necessarily benefit American, or in the
15 way of -- how we have built the NEA, that would just be their
16 slots.

17 **Q.** So you're leasing to JetBlue in order to benefit American
18 in the NEA?

19 **A.** Are you asking, are we leasing them slots in the NEA?

20 **Q.** You're leasing to JetBlue in order to benefit American?

21 **A.** Not necessarily, if there's no capacity, scheduling, or
22 anything like that.

23 **Q.** But there is capacity, scheduling in the NEA, right?

24 **A.** Oh, yeah. In this -- in the NEA, yes.

25 **Q.** So you're leasing to JetBlue in order to benefit American

1 in the NEA; is that right?

2 **A.** I think it benefits the NEA. I don't know if we get paid
3 for them or anything.

4 MR. MOORE: And we can take this slide down.

5 BY MR. MOORE:

6 **Q.** You also talked about the planes that will be available
7 in 2023 and what was available in 2019. Do you recall that?

8 **A.** Yes.

9 **Q.** Well, the XLRs, for example, that was a plane that you
10 were going to order anyhow anyway, regardless of the NEA,
11 right? And when I say "you," I mean American.

12 **A.** American ordered the airplane not -- before 2019. I
13 don't know what year.

14 **Q.** Okay. So prior to the NEA, though?

15 **A.** Yes.

16 **Q.** And there's nothing preventing American from buying other
17 planes in the future, right?

18 **A.** Other than manufacturers being able to make airplanes and
19 skyline production, no.

20 **Q.** So American and JetBlue could have bought airplanes in
21 the future without the Northeast Alliance, right?

22 **A.** Yeah, any airline could buy airplanes.

23 **Q.** And you spoke a bit with Ms. Maltas about the Raven
24 model. Do you recall that?

25 **A.** Yes.

1 **Q.** And these Raven outputs, as we've discussed, they were
2 used and provided to the economist in this litigation; is
3 that right?

4 **A.** As far as I'm aware, yes.

5 **Q.** But your first time working with Raven in these results
6 was during the clean team's work on the Northeast Alliance;
7 is that right?

8 **A.** Yes. This is the first big project that I had.

9 **Q.** And to the best of your knowledge, Raven was not used at
10 American until late 2019 or early 2020; is that right?

11 **A.** I did not use it, and I just know of testing and it being
12 used on some other projects. But I don't know of it being
13 used beyond that, no.

14 **Q.** I want to turn to a new exhibit in your binder, which is
15 PX294?

16 MR. MOORE: And Your Honor, this is already in
17 evidence.

18 BY MR. MOORE:

19 **Q.** And I want to focus, for the most part, on the first
20 e-mail on the thread from Mr. McElfresh. It's towards the
21 end of the document, earliest in timing, though. And just
22 let me know when you get there.

23 **A.** You said it's the last page?

24 **Q.** Correct.

25 **A.** Okay.

1 Q. And it's on your screen now, as well.

2 Are you there?

3 A. Yup.

4 Q. So this is an e-mail from Mr. McElfresh; is that right?

5 A. Yes.

6 Q. And Mr. McElfresh, he was responsible for running Raven
7 as part of the clean team's work; is that right?

8 A. Yes.

9 Q. So in this e-mail, Mr. McElfresh is summarizing the
10 results of a comparison between a "Base Case" and a
11 "Scenario 1"; is that right?

12 A. Yes.

13 Q. And Scenario 1, if we look under the bolded and
14 underlined topic heading, it describes it as a, "Fully
15 reciprocal, interlining codeshare across American's and
16 JetBlue's entire networks"; is that right?

17 A. That's what it says, yes.

18 Q. And if we look under "Initial Results," he says, "This
19 results in revenue synergies in 1.8 billion per year"; is
20 that right?

21 A. That's what it says, yes.

22 Q. And he says, "It's more than any airline merger in
23 history since Delta/Northwest"; is that right?

24 A. That's what it says, yes.

25 Q. And in the next sentence he goes on to say, "Because the

1 historical data on domestic codeshare relationships is
2 relatively small and based on flights that have been at least
3 partially optimized for network fit, Raven is likely biased
4 to overvalue these types of broad domestic codeshare
5 relationships."

6 Do you see that?

7 **A.** Yes.

8 **Q.** And your understanding of this is that Raven was not
9 really built to analyze this type of relationship, right?

10 **A.** I don't know.

11 THE COURT: Is Raven proprietary to
12 American Airlines?

13 THE WITNESS: Yes.

14 THE COURT: Somebody built it within American or
15 with the help of consultants?

16 THE WITNESS: Yeah. There we had an operations
17 research team build it.

18 THE COURT: Okay. Go ahead.

19 BY MR. MOORE:

20 **Q.** Mr. Pack, do you recall -- I think we discussed it
21 already -- you gave a couple depositions in this
22 investigation litigation?

23 **A.** Yes.

24 **Q.** If we go to your CID deposition, which is page 227. It's
25 the first tab in your binder.

1 **A.** 220 -- what page?

2 THE COURT: 228.

3 BY MR. MOORE:

4 **Q.** Are you there?

5 **A.** Yes.

6 **Q.** So I'm going to be looking at lines 12 to 23. It says,

7 "QUESTION: So the next sentence, because of
8 historical data on domestic codeshare relationships is
9 relatively small and based on flights that have been at least
10 partially optimized for network fit, Raven is likely biased
11 to overvalue these types of broad domestic codeshare
12 relationships. What does that mean?"

13 Your answer there was, "I take that to mean that he
14 is saying that Raven was not really built to kind of analyze
15 this type of relationship from the get-go. There isn't a lot
16 of data that it has to analyze, and we haven't quite used
17 Raven on a partnership like this yet."

18 Did I read that correctly?

19 **A.** Yes.

20 MR. MOORE: Your Honor, we move to admit that as a
21 party admission.

22 MS. MALTAS: No objection.

23 THE COURT: Admitted. CID deposition of Mr. Pack,
24 page 228, lines 12 to 23.

25 (Plaintiffs' Exhibit CID deposition of Mr. Pack,

1 page 228, lines 12 to 23 admitted into evidence.)

2 MR. MOORE: And you can put that document aside.

3 BY MR. MOORE:

4 Q. Mr. Pack, you also discussed the v4 schedule with
5 Ms. Maltas. Do you recall that?

6 A. Yes.

7 Q. And it's your understanding that Mr. Vasu Raja was the
8 leader of the negotiations regarding the Northeast Alliance
9 for the American side; is that right?

10 A. Yes.

11 Q. Did you ever tell him about the concerns that we
12 discussed today in the text messages that you and
13 Mr. Schweinzger exchanged on May 29th?

14 THE COURT: Which? The ones about DOJ killing the
15 deal?

16 MR. MOORE: Correct. Yes, Your Honor.

17 THE COURT: Okay. Go ahead.

18 THE WITNESS: Did I tell him that I had concerns
19 about -- is that what you're asking?

20 BY MR. MOORE:

21 Q. Yes, did you ever tell him about the concerns that you
22 expressed to Mr. Schweinzger on May 29th?

23 A. Not that I can remember.

24 MS. MALTAS: Also, objection to form. What
25 concerns?

1 THE COURT: The ones identified in those decks.
2 Go ahead, overruled.

3 MR. MOORE: So let's actually just pull up 372A, so
4 we're all talking about the same thing.

5 THE COURT: We are. That's why I asked you the
6 question.

7 MR. MOORE: I just want to make sure that he's
8 looking at it, as well, so he's looking at the document,
9 understands what we're talking about.

10 I think we're on page 2.

11 Actually, let's go to page 3.

12 BY MR. MOORE:

13 Q. So let's highlight the messages from 10:02 p.m. yeah,
14 all at 10:02 p.m. So those concerns about showing full
15 network results, and full network results being no bueno, did
16 you ever express those concerns to Mr. Raja?

17 A. Well, they were Chad's concerns that I said yes to, but I
18 don't remember talking to Vasu.

19 Q. So you don't remember discussing Mr. Schweinzger's
20 concerns with Mr. Raja?

21 THE COURT: Whether these were concerns, ideas, or
22 merely the statement of words in the text message, the
23 question was did you ever communicate to Mr. Raja the things
24 and ideas and words that were communicated in those texts
25 that are there highlighted?

1 THE WITNESS: Sitting here now nothing comes to
2 mind that I communicated, I can't think of a time in which I
3 talked to him about it.

4 THE COURT: Okay. Go ahead.

5 MR. MOORE: You can take that document down.

6 Actually, sorry, pull it back up. Apologies for
7 that. I want to go to the text message that I believe is on
8 page 3 of the demonstrative, and let's go to
9 Mr. Schweinzger's message at 10:03 p.m.

10 BY MR. MOORE:

11 Q. So we discussed this earlier, but Mr. Schweinzger's
12 writing, "Based on what I am hearing here, if I was DOJ, I
13 could easily kill any deal." That message, do you see that?

14 A. Yes.

15 Q. And when he says here, was it your testimony that he was
16 talking about a meeting that was ongoing with Compass Lexecon
17 at the time?

18 A. Yes.

19 Q. So your understanding is he's saying, based on what I'm
20 hearing in this meeting with Compass Lexecon, DOJ could
21 easily kill any deal?

22 A. Basically his frustration and taking out because we were
23 constantly being asked a lot of questions and basically being
24 interrogated on the phone from Compass and Latham about what
25 we found, and I think, at least to me, I felt that oh my god,

1 everything that you're asking was like, well, nothing was
2 ever possible. Like we couldn't do anything.

3 **Q.** That was the impression you were getting from counsel and
4 Compass Lexecon on the call, that you couldn't do anything.

5 **A.** Just because they were so overwhelming, they were
6 hounding us. Yes.

7 **Q.** Having you come up with some benefits for the alliance,
8 right?

9 **A.** No.

10 **Q.** What were they hounding you about?

11 **A.** Basically saying like how does it work and what's going
12 on, and what are you doing?

13 **Q.** I want to go to the message if we can pull that out.
14 Zoom in.

15 Let's go to the next page, yeah, thank you. I want
16 to go to the message at 10:29 p.m., it starts with, "These
17 people."

18 BY MR. MOORE:

19 **Q.** So I think you testified on your examination with
20 Ms. Maltas that, "These people," this message was occurring
21 during the meeting with Compass Lexecon; is that right?

22 **A.** And Latham, yes.

23 **Q.** Okay. So is these people, does that refer to Compass
24 Lexecon and Latham?

25 **A.** I think so, yes.

1 Q. Okay.

2 MR. MOORE: Your Honor, I don't have any further
3 questions at this time.

4 THE COURT: All right. Any redirect -- or recross,
5 rather?

6 MS. MALTAS: Just a few brief things, Your Honor.

7 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT AMERICAN AIRLINES**

8 BY MS. MALTAS:

9 Q. So at this time, had Mr. Raja already seen v2?

10 A. I showed him decks about the alliance. I don't know if
11 he saw the v2 schedule or not.

12 Q. But he was aware of the alliance, and you had provided
13 him updates about the alliance?

14 A. Yes. And we went over the principles and the goals and
15 what we were doing in the network, yes.

16 Q. And were you preparing for a meeting -- you mentioned
17 that you were preparing for a meeting that was supposed to
18 happen on Monday. Do you recall that testimony?

19 A. Yes.

20 Q. And what meeting was that?

21 A. It was an officer staff meeting.

22 Q. And who was going to present about v2 in the officer
23 staff meeting?

24 A. I think Vasu.

25 MS. MALTAS: Thank you. I have no further

1 questions.

2 MR. MOORE: Nothing further, Your Honor.

3 THE COURT: All right. You're excused. Thank you
4 very much. Have a nice day.

5 Next witness.

6 MR. JONES: Your Honor, the plaintiffs call Eric
7 Friedman, and Sarah McDonough of the Department of Justice
8 will conduct the examination.

9 THE COURT: Okay.

10 THE DEPUTY CLERK: Mr. Friedman, if you could
11 please raise your right hand.

12 (The witness was duly sworn.)

13 THE DEPUTY CLERK: Can you please state your name
14 for the record.

15 THE WITNESS: My name is Eric Friedman.

16 THE COURT: Go ahead. Whenever you're ready.

17 MS. MCDONOUGH: Good afternoon, Your Honor.

18 Good afternoon, Mr. Friedman.

19 THE WITNESS: Good afternoon.

20 MS. MCDONOUGH: Sarah McDonough for the United
21 States and plaintiffs.

22 **ERIC FRIEDMAN**

23 having been duly sworn, testified as follows:

24 **DIRECT EXAMINATION BY COUNSEL FOR PLAINTIFF USA**

25 BY MS. MCDONOUGH:

1 Q. Mr. Friedman, we've handed you a binder. We'll likely
2 refer to the binders during your examination. I'll let you
3 know when to turn to that and where to direct your attention.

4 Mr. Freidman, you've worked at JetBlue since 2011;
5 is that correct?

6 A. That is correct.

7 Q. You're the director of route planning?

8 A. Yes.

9 Q. You've held that job since April of 2021?

10 A. In function, yes; officially May 2021.

11 Q. Before this role, you were manager of route planning?

12 A. Yes.

13 Q. You held that role between July 2017 and April 2021?

14 A. Yes, that's correct.

15 Q. Route planning is part of the network planning
16 department, correct?

17 A. Yes.

18 Q. Your supervisor from May 2017, until June 2022 was Andrea
19 Lusso?

20 A. Yes, that's correct.

21 Q. He was the vice president of network planning?

22 A. First director and then vice president, yes.

23 Q. One of your responsibilities as the director of route
24 planning is overseeing the long-term planning process of
25 JetBlue's network, correct?

1 **A.** There are multiple functions, and that is one of them,
2 yes.

3 **Q.** Mr. Freidman, I'd like to ask some questions first about
4 JetBlue in Boston before the Northeast Alliance.

5 **A.** Sure.

6 **Q.** Boston is an important focus city for JetBlue, correct?

7 **A.** Yes, absolutely.

8 **Q.** JetBlue had grown significantly in Boston between 2010
9 and 2019?

10 **A.** Yes.

11 **Q.** Let's take a look at PX643 in your binder.

12 MS. MCDONOUGH: This exhibit is in evidence,
13 Your Honor.

14 THE COURT: Okay.

15 BY MS. MCDONOUGH:

16 **Q.** PX643 is an e-mail chain between you, Steve Kennington,
17 and Andrea Lusso?

18 Excuse me, are you there?

19 **A.** Yes.

20 THE COURT: It's also on your screen if you like
21 that better.

22 THE WITNESS: Thank you, Your Honor.

23 THE COURT: Sure.

24 Go ahead.

25 BY MS. MCDONOUGH:

1 **Q.** PX643 is an e-mail between you, Steve Kennington, and
2 Andrea Lusso, from May 31, 2019, correct?

3 **A.** Yes.

4 **Q.** And Steve Kennington was the director of strategy and
5 business development at the time?

6 **A.** Yes.

7 **Q.** In the attachment line of the header of the e-mail, it
8 says that there's an attachment called, "Board book 2019
9 Addendum v6," Correct?

10 **A.** Yes, I see that.

11 **Q.** A board book is reading material created for a board of
12 directors oversight each year at JetBlue?

13 **A.** This time frame would be for the board of directors
14 oversight, yes.

15 **Q.** And this thread and the attachment reflect a section of
16 the board book that the network planning team was
17 contributing?

18 **A.** Yes, it appears so.

19 **Q.** Let's take a look at page 8, which is the first page of
20 the attachment. It ends in 4031.

21 Looking at the second paragraph, it
22 reads, "JetBlue's focus on Boston has resulted in JetBlue
23 growing from just 18 percent market share in 2010 to
24 29 percent by the end of 2019."

25 Is that what you wrote?

1 **A.** I'm not sure if I wrote this specifically, but that is
2 what's stated.

3 **Q.** That's an 11-point seat share increase?

4 **A.** Yes, that is.

5 **Q.** An 11-point seat share increase is a nice win?

6 **A.** Where does that -- where do we say that?

7 THE COURT: She's just asking you that, I think.

8 THE WITNESS: Oh.

9 It's a -- it's certainly a good improvement.

10 BY MS. MCDONOUGH:

11 **Q.** Let's take a look at the second-to-last paragraph on this
12 page, which begins with "Striking." Are you there?

13 **A.** Yes.

14 **Q.** The document says, "Striking the right balance of growth
15 in Boston moving forward involves adding frequency to
16 business markets like Charlotte, Dallas, Washington, D.C.,
17 and Denver, et cetera."

18 Do you see that?

19 **A.** Yes.

20 **Q.** And that sentence is referring to JetBlue growth in
21 business markets from Boston, correct?

22 **A.** To business markets like Charlotte, Dallas, Washington,
23 D.C., and Denver.

24 **Q.** One of those business markets was Boston to Charlotte,
25 North Carolina, correct?

1 **A.** Yes.

2 **Q.** And Charlotte is an American hub?

3 **A.** Charlotte is an American hub.

4 **Q.** Another one of those business markets was Boston to
5 Dallas, Texas, correct?

6 **A.** Correct.

7 **Q.** Dallas is an American hub?

8 **A.** Yes.

9 **Q.** Another one of those business markets was Boston to
10 Washington, D.C., correct?

11 **A.** That is correct.

12 **Q.** Reagan National Airport in Washington, D.C., is an
13 American hub, correct?

14 **A.** That is correct.

15 **Q.** The next part of this sentence says, "Solidifying our
16 Mint offering in Los Angeles and San Francisco and offering
17 day-time service on some of our redeye-only service, like
18 Phoenix."

19 Do you see that?

20 **A.** Yes, I do.

21 **Q.** This part of the sentence is discussing growth in Boston
22 by solidifying Mint service in transcontinental markets such
23 as Boston to Los Angeles?

24 **A.** Yes.

25 **Q.** Los Angeles is an American hub?

1 **A.** Yes.

2 **Q.** And the sentence also discusses offering daytime service
3 on some of JetBlue's redeye-only routes, such as Boston to
4 Phoenix; is that right?

5 **A.** Yes.

6 **Q.** And Phoenix is an American hub?

7 **A.** Yes.

8 **Q.** Before the Northeast Alliance, Mr. Freidman, JetBlue was
9 planning to grow out of Boston by adding additional capacity
10 to these markets into American hubs, correct?

11 **A.** Yes. And we have continued to do so after the
12 implementation, as well.

13 **Q.** I'd like to switch gears to talk about transatlantic
14 routes. Please take a look at PX672 in your binder. Let me
15 know when you're there.

16 **A.** Yes.

17 **Q.** This is an e-mail from your colleague, Nicholas Han, and
18 you're copied, correct?

19 **A.** Yes, I am.

20 **Q.** And it's from August 2018?

21 **A.** Yes.

22 **Q.** And the e-mail on the attached deck are about the impact
23 of joint ventures on transatlantic fares, correct?

24 **A.** That is what it appears to be, yes.

25 **Q.** Let's take a look at the page that ends with 040. It's

1 Sebastian White's e-mail on August 15th, 2018.

2 **A.** 2040?

3 **Q.** Yes.

4 **A.** Okay.

5 **Q.** Mr. White was a director of corporate communications,
6 correct?

7 **A.** Yes. Still is.

8 **Q.** And he had reached out to several people, including your
9 boss, Mr. Lusso, looking for good data for a speaking
10 engagement for Mr. Hayes; is that right?

11 **A.** Yes, I believe so.

12 **Q.** In particular, looking at the e-mail, Mr. White was
13 looking for good data we can arm him with related to the
14 impact of industry consolidation." Do you see that?

15 **A.** Yes.

16 **Q.** Let's take a look at the e-mail on the page that ends in
17 039. It's an e-mail about a third of the way down the second
18 page, where your boss, Mr. Lusso, responds. Do you see that?

19 **A.** Yes.

20 **Q.** Mr. Lusso writes, "I'm happy to get started on updating
21 the JV work we've done in the past. We've looked at market
22 dynamics a few times and should be able to update a good
23 story on how competition benefits the traveling public." Do
24 you see that?

25 **A.** Yes.

1 **Q.** Take a look at the page that ends in 038. It's Mr. Han's
2 e-mail on the first page. Are you there?

3 **A.** Yes.

4 **Q.** Take a look at the second paragraph, which is above the
5 line. Mr. Han says that he's including a summary of the
6 attached slide deck to this cover e-mail. Do you see that?

7 **A.** Yes.

8 **Q.** Okay. Let's look at his summary. In the first paragraph
9 below the line, Mr. Han lists the current transatlantic joint
10 ventures. Do you see that? That's current as of 2018?

11 **A.** Yes, American, British Airways, Iberia, Thin Air, Delta.
12 Yeah.

13 **Q.** American and British Airways entered into a joint venture
14 in 2010, correct?

15 **A.** I don't recall the exact year, but they are in a joint
16 venture.

17 **Q.** Let's take a look at the third paragraph of Mr. Han's
18 e-mail below the line. Here Mr. Han is looking at American
19 and British Airways's joint ventures as an example. Do you
20 see that?

21 **A.** Yes. In 2010.

22 **Q.** Okay. And the time period that this paragraph discusses
23 is between 2009 and 2012. So the period immediately before
24 and two years after American and British Airways entered that
25 joint venture, correct?

1 **A.** Yes. And I believe this joint ventures had antitrust
2 immunity and pricing coordination attached with it, so just
3 fundamentally different, but yes.

4 **Q.** Under the joint ventures, American and British Airways
5 could also coordinate capacity, correct?

6 **A.** As well as pricing.

7 **Q.** And they could also coordinate schedules, correct?

8 **A.** And pricing.

9 **Q.** And they could also share revenue, correct?

10 **A.** Yes.

11 **Q.** And if you look at the rest of this paragraph, Mr. Han
12 writes that, "In that time period between 2009 and 2012,
13 American and British Airways' fares rose 21 percent, while
14 capacity rose only 6 percent." Correct?

15 **A.** The ability to coordinate on pricing had a
16 disproportionate effect on fares.

17 **Q.** Let me repeat my question. In the paragraph here,
18 Mr. Han states that, in the time period between 2009 and
19 2012, so the period immediately before and immediately after
20 that joint venture, American and British Airways fares rose
21 21 percent while capacity rose only 6 percent. Do you see
22 that?

23 **A.** Yes. Despite capacity going up, fares also went up.

24 **Q.** And fares rose 21 percent while capacity rose six
25 percent. Is that what you see?

1 **A.** Yes, I do see that.

2 **Q.** If you look at the last sentence of this paragraph, it
3 says that American exited Boston to London in 2013 and only
4 some of its capacity shifted to British Airways. Do you see
5 that?

6 **A.** Yes.

7 **Q.** And that all -- overall capacity on the route went down
8 by 16 percent. Do you see that?

9 **A.** I do.

10 **Q.** Let's take a look at the second paragraph. This
11 paragraph says that after the Delta and Virgin Atlantic joint
12 ventures in 2013, fares increased in New York to London
13 relative to other transatlantic markets. Do you see that?

14 **A.** I do. I believe that joint venture also has pricing
15 coordination built in.

16 **Q.** Does that joint venture -- is it your understanding that
17 that joint venture also allows those two carriers to
18 coordinate capacity?

19 **A.** Yes.

20 **Q.** And to coordinate schedules?

21 **A.** And pricing.

22 **Q.** Was that a yes to the question whether it allows them to
23 coordinate schedules?

24 **A.** Yes to all three.

25 **Q.** And it allows them to share revenue, correct?

1 **A.** Yes.

2 **Q.** The next sentence in that paragraph says, "And as of
3 2018, fares were 8 percent higher than they were before the
4 Delta-Virgin joint venture"; do you see that?

5 **A.** Yes, I do.

6 **Q.** And the last sentence says, "A similar effect happened in
7 Boston to London when comparing 2014 versus 2012 in which
8 Delta and Virgin fares were up 13 percent with their capacity
9 down 7 percent."

10 Do you see that?

11 **A.** Yes.

12 **Q.** Let's turn back to Mr. Han's first paragraph. In the
13 last sentence, he summarizes and says, "In general, joint
14 ventures create less competition and higher fares." Do you
15 see that?

16 **A.** Yes.

17 **Q.** Let's take a look at PX525 in your binder.

18 MS. MCDONOUGH: Your Honor, this exhibit is in
19 evidence. JetBlue has generated certain redactions to this
20 exhibit.

21 BY MS. MCDONOUGH:

22 **Q.** So Mr. Freidman, I'll caution you not to reveal any
23 redacted information. Do you understand?

24 **A.** Yes.

25 THE COURT: So the redacted --

1 You can put it up on the screen.

2 The blacked-out redacted portions on the screen are
3 redacted. You can look at the entire document. She doesn't
4 want you to read from the document or refer to the things in
5 the document that are redacted.

6 THE WITNESS: Thank you, Your Honor.

7 THE COURT: Go ahead.

8 MS. MCDONOUGH: Thank you, Your Honor.

9 THE WITNESS: I'm sorry. 525, this is?

10 MS. MCDONOUGH: Correct. Yes.

11 THE WITNESS: Okay.

12 BY MS. MCDONOUGH:

13 **Q.** PX525 is an e-mail between you -- excuse me -- is an
14 e-mail from you to Andrea Lusso and Nicholas Han on July 15,
15 2020; is that right?

16 **A.** Yes.

17 **Q.** In July -- in July 2020, the COVID-19 pandemic had
18 already begun, correct?

19 **A.** Yes.

20 **Q.** Nicholas Han -- who we were discussing in the previous
21 exhibit -- is a manager of route planning at JetBlue?

22 **A.** Yes, that's correct.

23 **Q.** And this e-mail has the subject "Five-Year Plan,"
24 correct?

25 **A.** Yes.

1 **Q.** There's an attachment listed called "Five-Year Plan
2 Forecast, Version 10"?

3 **A.** Yes, one of many.

4 **Q.** To be clear, that is the attachment listed on this
5 e-mail, correct?

6 **A.** Yes.

7 **Q.** If you look at your first paragraph, you're sending
8 Mr. Lusso a five-year plan forecast that had been updated by
9 two of your colleagues, correct?

10 **A.** Yes, that's correct.

11 **Q.** Looking at the second line, you say, "Attached is the
12 five-year plan. No Connie, network fleet ask." That's what
13 you wrote?

14 **A.** Yes.

15 **Q.** "No Connie" means that this is the five-year plan as of
16 July 2020 without the Northeast Alliance factored in,
17 correct?

18 **A.** I would not characterize it as such, no. This is a
19 desired route planning plan, not necessarily the five-year
20 plan of JetBlue officially in the eyes of executive
21 leadership.

22 THE COURT: So was it a -- it's a five-year -- a
23 five-year plan for senior people to consider, but it's a plan
24 that doesn't factor in the Northeast Alliance? It's just not
25 necessarily one that was endorsed?

1 THE WITNESS: Correct. Around this time, there
2 were multiple -- correct, Your Honor. There were multiple
3 recovery scenarios that we were modeling, things like a
4 V-shaped recovery or U-shaped recovery, L-shaped recovery.
5 So this assumed one of those types of recoveries. I can't
6 remember offhand which one.

7 This was after a fleet deferral that occurred
8 earlier that -- that spring or summer, as well. So this was
9 one plan that we wanted to pursue but certainly didn't have
10 full executive leadership buy-in on moving forward.

11 THE COURT: Go ahead.

12 BY MS. MCDONOUGH:

13 Q. Mr. Friedman, do you see, before this description that
14 we've highlighted, it says, "Attached is the five-year plan,
15 no Connie network fleet ask?"

16 A. Yeah, the five-year plan that you asked for.

17 Q. Let's turn to the middle of this page, to the
18 "methodology" section. Taking a look at the third bullet
19 point you say, "Network expansion to prioritize contractual
20 agreements." That's what you wrote?

21 A. Yes. We absolutely have to honor contractual agreements.

22 Q. And the first bullet point under that heading
23 says, "Cover JFK slots attained through AA deal (not
24 Connie)," correct?

25 A. Correct. That's what it states.

1 **Q.** And that refers to the 37 slots that JetBlue leased from
2 American before the Northeast Alliance, correct?

3 **A.** So I'm not sure of the details of slot lease proposal. I
4 know it was told to us to include them. I don't know if it
5 was ever executed or if we ever flew those slots. But they
6 were asked to be included.

7 **Q.** Mr. Friedman, you've given two depositions in this
8 matter; is that right?

9 **A.** Yes.

10 **Q.** And on both of those occasions, you were under oath, just
11 as you are today?

12 **A.** Yes.

13 **Q.** Please take a note at Tab 1 of your binder, which is the
14 transcript from December 21st, 2020. If you could please
15 turn to page 244.

16 THE COURT: 244?

17 MS. MCDONOUGH: Yes, Your Honor.

18 BY MS. MCDONOUGH:

19 **Q.** I'd like to direct your attention to page 244, line 24,
20 through page 245, line 9. The question was, "Let's turn to
21 the Methodology section. In the fourth bullet point, you
22 wrote, 'Cover JFK slots attained through AA deal (not
23 Connie.)' Did I read that correctly?"

24 "ANSWER: Yes.

25 "QUESTION: That refers to the slot that JetBlue

1 negotiated with American, with AA, before the Northeast
2 Alliance, right?

3 "ANSWER: Yes."

4 That was your sworn testimony?

5 **A.** Yes. I'm not sure if we actually executed it, took
6 possession of them. I'm not sure what happened.

7 **Q.** But that was your sworn testimony?

8 **A.** Yes.

9 MS. MCDONOUGH: Your Honor, plaintiffs move to
10 admit page 244:24 through 245:9 from Mr. Friedman's
11 December 21, 2020, deposition into evidence as a party
12 admission.

13 MR. SCHWED: No objection.

14 THE COURT: Admitted.

15 (Plaintiffs' Exhibit page 244:24 through 245:9 from
16 Mr. Friedman's December 21, 2020, deposition
17 admitted into evidence.)

18 BY MS. MCDONOUGH:

19 **Q.** So, Mr. Friedman, turning back to the document --

20 **A.** I apologize. What tab was it?

21 **Q.** PX525.

22 **A.** Okay.

23 **Q.** So when you refer to "cover JFK slots obtained through AA
24 deal (not Connie)" you're incorporating those slots into
25 JetBlue's stand-alone, five-year plan, correct?

1 **A.** In this version of the five-year plan.

2 **Q.** The version of the five-year plan that didn't include the
3 Northeast Alliance, correct?

4 **A.** Correct.

5 **Q.** Let's take a look at the bottom of the first page, at the
6 "result" section. There's a chart that shows max departures
7 and average departures. Do you see that?

8 **A.** Yes.

9 **Q.** And I'll caution you not to reveal any information that
10 JetBlue has redacted in those outer years. Okay?

11 **A.** Sure.

12 **Q.** Taking a look at the max departures, do you see the row
13 that says "JFK"?

14 **A.** Yes.

15 **Q.** Max departures at JFK as of 2019 were 174, correct?

16 **A.** That is correct.

17 **Q.** Max departures at JFK as of 2022 were projected to be
18 191, correct?

19 **A.** Yes, that's correct.

20 **Q.** Max departures in Boston in 2019 were 178, correct?

21 **A.** That is correct.

22 **Q.** And max departures at Boston in 2022 were 185, correct?

23 **A.** That is correct.

24 **Q.** And please don't reveal the specific numbers, because
25 you're counsel has redacted them, but the max departures in

1 Boston for 2023 continue to grow, correct?

2 **A.** Yes.

3 **Q.** And the departure count continues to grow through 2026,
4 correct?

5 **A.** I'm sorry; for which city?

6 **Q.** Boston.

7 **A.** They grow through -- I guess it's redacted, but their --
8 it doesn't.

9 MR. SCHWED: You can just say maybe the growth
10 pattern without revealing the numbers, so -- whether it's the
11 same or greater or whatever.

12 THE WITNESS: It does not grow through 2026.

13 BY MS. MCDONOUGH:

14 **Q.** Excuse me. It continues to grow through 2025; is that
15 correct?

16 **A.** Yes.

17 **Q.** And the departures for 2026 are greater than the
18 departures from 2019, correct?

19 **A.** Yes, that's correct.

20 **Q.** And, Mr. Freidman, all of the projected growth in this
21 table is independent of the Northeast Alliance, correct?

22 **A.** This is a potential plan that was put forward with
23 certain opportunities. I guess the JFK slots attained
24 through the AA deal, not Connie, that those ultimately did
25 not happen, and we did not fly them.

1 So this -- this plan was not the plan that we
2 ultimately went with in the summer of 2020, during COVID.
3 This was one of multiple plans being considered. This was
4 one iteration of a plan without Connie. I'm not aware of the
5 details around the AA slot deal, but I wouldn't characterize
6 this as the plan without Connie, period, right?

7 There were -- remember where we were in June of
8 2020. We had just all come out of our homes for the first
9 time out of quarantine. There were multiple plans that were
10 put forward.

11 **Q.** Maybe you misunderstood my question. I asked all of the
12 projected growth in this table was independent from the
13 Northeast Alliance; is that correct, Mr. Freidman?

14 **A.** In this iteration of the plan, this growth, yeah. Yes.

15 **Q.** So in this iteration of the plan, without the Northeast
16 Alliance, JetBlue was planning to grow at JFK, correct?

17 **A.** In this iteration of the plan, that was the plan.

18 **Q.** That was a yes?

19 **A.** Yes.

20 **Q.** And in this iteration of the plan, without the Northeast
21 Alliance, JetBlue was planning to grow at Boston, correct?

22 **A.** Yes.

23 **Q.** Let's take a look at the middle of the second page, at
24 the, "Conclusion."

25 In the conclusion you write, "This exercise makes

1 extremely clear that regardless of Connie, JetBlue will have
2 to find a way to preserve and likely grow the order book,
3 whether through new aircraft, old aircraft keeping E90s,
4 purchasing or leasing."

5 Did I read that right?

6 **A.** Yes. So this plan was created after the deferral of the
7 initial 30 to 40 aircraft that happened as a result of COVID.
8 This plan never accounted for those aircraft leaving.

9 So if we as the company wanted to maintain the
10 pre-COVID growth rates, we would have had to have done so by
11 getting more aircraft. And with Connie, we would have needed
12 even more aircraft. We ultimately put the business cases
13 forward over the next year and a half, two years.

14 **Q.** You continue in that paragraph, "As of now, we risk
15 Boston and Fort Lauderdale for JFK, Los Angeles, Orlando, and
16 operational flexibility," correct?

17 **A.** Yes, I see that.

18 **Q.** And, again, those risks existed regardless of the --
19 regardless of Connie, correct?

20 **A.** Those risks are there, one, for operational flexibility,
21 and that was essentially modeling aircraft utilization
22 5 percent below 2019 levels. That risk was there because we
23 had just deferred 30 to 40 aircraft. And because of the
24 financial situation of COVID, we had to get rid of those
25 aircraft. And by definition, those focus cities' growth

1 would be at risk.

2 **Q.** Maybe my question wasn't clear. Those risks existed
3 regardless of Connie, correct?

4 **A.** Those risks existed because of the fleet deferral that
5 occurred due to COVID.

6 **Q.** And taking a look at your first sentence in this
7 paragraph, you say, "This exercise makes extremely clear that
8 regardless of Connie, JetBlue will have to find a way to
9 observe and grow the current order book."

10 Do you see that?

11 **A.** Yes. Connie always required more aircraft, and we were
12 ultimately successful in getting more aircraft specifically
13 for the NEA.

14 **Q.** And the risks that you're listing in this paragraph
15 you're saying exist regardless of Connie, correct?

16 **A.** Correct. Connie always required more aircraft regardless
17 of the situation. We always needed more aircraft. We put
18 business cases for -- for those aircraft and were actually
19 successful in obtaining the aircraft for the NEA.

20 **Q.** In the last sentence of this paragraph, you write, "If
21 the fleet can't grow, something has to go." Do you see that?

22 **A.** Yes. I see that. That's a direct result of the fleet
23 deferrals, getting rid of 30 to 40 aircraft due to COVID.

24 **Q.** I'd like to switch gears to talk about your interactions
25 with JetBlue's clean team that was working on the Northeast

1 Alliance. You were not a member of the clean team?

2 **A.** No, I was not.

3 **Q.** Your supervisor, Andrea Lusso, was also not a member of
4 the clean team, correct?

5 **A.** No, he was not.

6 **Q.** In fact, no one from the JetBlue network planning team
7 was on the clean team, correct?

8 **A.** That's correct. To my knowledge, we were not legally
9 allowed to be part of the clean team.

10 **Q.** But members of the clean team did ask you to compare
11 their forecast of the Northeast Alliance with the network
12 planning team's forecast for JetBlue, correct?

13 **A.** Yes, that's correct.

14 **Q.** I'd like to take a look first at PX553 in your binder.

15 MS. MCDONOUGH: Your Honor, this exhibit is already
16 in evidence.

17 THE COURT: 553, did you say?

18 MS. MCDONOUGH: 553, yes, Your Honor.

19 THE COURT: Okay. Go ahead.

20 BY MS. MCDONOUGH:

21 **Q.** And I'd like to take a look at the very bottom of the
22 page that ends in 631, on to the top of the page that ends in
23 632. Excuse me. I'd just like to look at the page that ends
24 in 632. It's the first in time e-mail that's in this exhibit
25 from June 2nd.

1 Are you there?

2 **A.** 632?

3 **Q.** Yes.

4 **A.** 627 is on the screen, I believe.

5 Okay. Yeah.

6 **Q.** You write in this e-mail, "Attached is a file that models
7 out the full Connie plan put forward by SBD last night,
8 inclusive of JFK, LaGuardia, and Boston moves, and compares
9 the results to our forecasts on the assumptions tab."

10 That's what you wrote?

11 **A.** Yes.

12 **Q.** Okay. Let's take a look at the first page of this
13 exhibit, which ends in 627. Let's take a look at your e-mail
14 to your boss, Mr. Lusso, at 2:05 p.m. Do you see that?

15 **A.** Yes. On 627, yup, draft below. Yup.

16 **Q.** You say, "Draft below, let me know your thoughts and if I
17 should send," correct?

18 **A.** Yes.

19 **Q.** And you've included a list of discrepancies between your
20 analysis of the SBD work and the clean team's plan, correct?

21 **A.** Yes.

22 **Q.** And I should have said at the beginning, the subject of
23 this e-mail is "Connie Compare," correct?

24 **A.** Yes.

25 **Q.** The fifth concern on this e-mail says, "We still believe

1 that we are including value here that would have been
2 generated anyway, i.e., BUR Mint. It would be more
3 appropriate to identify the incremental value of the
4 partnership as it pertains to this and any other markets we
5 intend to serve as part of our five-year plan."

6 That's what you wrote?

7 **A.** That is what I wrote. I think what we were trying to get
8 at was more of a -- an incremental evaluation of the NEA as
9 opposed to a full P&L output of what the NEA would produce.

10 So if you think about it from an overlap
11 perspective, you know, I would say, if you think about it
12 from Boston, right, we had 180 flights a day in Boston
13 beforehand. This file had 240 flights.

14 The first 180 flights, right, we already know the
15 valuation of those. We were planning to go from 180 to 200.
16 We know the valuation of those. What I really wanted to know
17 is not the overlap between the two plans, but what was the
18 incremental 20 flights into Boston as a result of the NEA
19 going to be valued at.

20 **Q.** I'll ask you more questions about that as we go. For
21 now, you write in your e-mail to Mr. Lusso, "Draft below.
22 Let me know your thoughts below and if I should send." Do
23 you see that?

24 **A.** Yes.

25 **Q.** And Mr. Lusso responds to the e-mail at the very top of

1 this page, and he says, "Good by me, please send back to them
2 around 3:00 p.m., and copy me/Scott." Do you see that?

3 **A.** Yes.

4 **Q.** And "send back to them" means send to the clean team,
5 correct?

6 **A.** I imagine, yes.

7 **Q.** And did you understand Scott here to mean Scott Laurence?

8 **A.** Yes.

9 **Q.** And you did send those concerns on to the clean team
10 shortly after this e-mail on that day, correct?

11 **A.** I don't know if it was exactly that day, but, yes, I did
12 send it.

13 **Q.** You sent it to Mr. Fintzen; is that right?

14 **A.** Yes.

15 **Q.** Okay. You can put that exhibit to the side.

16 I'd like to take a look at PX1124, which is in
17 evidence. We will publish a redacted version.

18 PX1124 is an instant message chat between you and
19 Derek Klinka on June 3, 2020, correct?

20 **A.** Yes, it appears so.

21 **Q.** Derek Klinka was a member of the JetBlue's clean team?

22 **A.** Yes.

23 **Q.** Let's take a look at the third page, which ends in 432.
24 Halfway down the page is a chat from you to Mr. Klinka at
25 1:14 p.m. Do you see that? It's at the top of the

1 extraction that we've blown up.

2 **A.** Yes.

3 **Q.** You ask Mr. Klinka to send over the latest slot matrix in
4 Excel form, right?

5 **A.** Yes.

6 **Q.** And the slot matrix is the optimized schedule that the
7 clean team had prepared for 2023, correct?

8 **A.** I'm sorry; say that question again.

9 **Q.** The latest slot matrix that you're asking Mr. Klinka for
10 is the optimized schedule that the clean team had prepared
11 for 2023, correct?

12 **A.** I believe so.

13 **Q.** And Mr. Klinka responds, "I have it for us." Do you see
14 that?

15 **A.** Yes.

16 **Q.** And "us" -- did you understand "us" to mean JetBlue?

17 **A.** The clean team at JetBlue, yes.

18 **Q.** He writes, "I have it for us, but I don't have it in
19 Excel for Connie." Do you see that?

20 **A.** Yes.

21 **Q.** And you respond that you just need the latest B6, JFK,
22 LaGuardia, and Boston numbers to add on to your five-year
23 model, correct?

24 **A.** Correct.

25 **Q.** Mr. Klinka responds, "Wait, why does the matrix matter,

1 or is it separate from the regulatory exercise we're asking
2 for?" Do you see that?

3 **A.** I do see that.

4 **Q.** And you respond. Now we're at 1:21. You say, "No, it's
5 for the regulatory exercise, you want pre-COVID 2023,
6 post-COVID 2023 with Connie, and post-without Connie, right?
7 We need the latest frequency route counts for post-COVID 2023
8 with Connie." Correct?

9 **A.** Yes, that's what's written.

10 **Q.** The clean team had asked you to work on a project related
11 to a regulatory exercise, right?

12 **A.** I don't recall what the regulatory exercise was.

13 **Q.** Let's keep looking at the document. Mr. Klinka responds,
14 "I don't think you need post-COVID with Connie." Do you see
15 that?

16 **A.** Yes.

17 **Q.** And you respond, "Of course we do. We need to show
18 Justice the difference between the size of our airline with
19 Connie or without." Right?

20 **A.** Yes.

21 **Q.** "Justice" is the Department of Justice?

22 **A.** Yes, I believe so, in this context.

23 **Q.** The regulatory process that you referred to earlier
24 involved the Justice Department; is that right?

25 **A.** I believe we were trying to show the additional growth of

1 the NEA in New York City, in Boston, to -- I don't know if we
2 were trying to -- if there was a request from Justice. I
3 don't know if this was an exercise to prepare for that. But
4 we -- ultimately, we wanted to put something together that
5 showed the growth of the NEA in New York City and in Boston.

6 **Q.** You understood that, as part of the process to seek
7 approval from the Justice Department to go forward with the
8 Northeast Alliance, you would need to show the Justice
9 Department a forecast of what JetBlue would look like in 2023
10 with the Northeast Alliance versus what JetBlue would look
11 like in 2023 without the Northeast Alliance, correct?

12 MR. SCHWED: Objection. Foundation. He has no
13 involvement in the regulatory process.

14 THE COURT: I think she's just asking him --

15 MR. SCHWED: To the extent he does, it would be
16 based on legal advice.

17 THE COURT: I think she's asking what he understood
18 from this, not what was happening.

19 Right?

20 MS. MCDONOUGH: That's right. Thank you,
21 Your Honor.

22 THE COURT: So for that, I overrule it.

23 THE WITNESS: I acknowledge I was involved in some
24 sort of regulatory process exercise. I don't believe we went
25 through this document during my depositions, and I'm having

1 difficulty recalling the full context of what we were working
2 on here.

3 BY MS. MCDONOUGH:

4 **Q.** Mr. Friedman, I'm trying to unpack the last line of the
5 chat that we just discussed, where you say, "We need to show
6 Justice the difference between the size of our airline with
7 Connie or without." Do you see that?

8 **A.** Yes.

9 **Q.** So I'm asking -- you understood that, as part of this
10 regulatory exercise, that you would need to show the Justice
11 Department the difference between what JetBlue would look
12 like with the Northeast Alliance in 2023 versus what JetBlue
13 would look like without the Northeast Alliance in 2023,
14 correct?

15 **A.** I -- I don't know if we needed to show the Justice
16 Department because we were asked or just, philosophically, I
17 was thinking that.

18 **Q.** But you agree that --

19 THE COURT: But she's just asking what you were
20 thinking, not, in fact, what the Justice Department wanted.
21 In other words, you wrote that, right?

22 THE WITNESS: I did write that.

23 THE COURT: And so she's just asking, what did you
24 mean when you wrote it? I think.

25 MS. MCDONOUGH: Thank you, Your Honor.

1 THE WITNESS: Understood. I honestly can't
2 remember the context of the conversation, but we needed data
3 to show the difference between before and after.

4 BY MS. MCDONOUGH:

5 Q. You needed data to show the difference between what
6 JetBlue would look like with the Northeast Alliance versus
7 what JetBlue would look like without the Northeast Alliance,
8 correct?

9 A. Correct.

10 Q. Okay. And for your part in this, the clean team had
11 asked you to put together the part of that analysis that
12 would show what JetBlue would look like in 2023 without the
13 Northeast Alliance, correct?

14 A. I apologize. Can you ask the question again?

15 Q. For your part in this, the clean team had asked you to
16 put together an analysis that would show what JetBlue would
17 look like in 2023 without the Northeast Alliance, correct?

18 A. I'm -- where does the clean team ask me for that?

19 Q. I'm asking you whether that's correct, that that was
20 your --

21 A. I believe I'm asking the clean team for the plan with
22 Connie so we can compare it to the plan that the network team
23 put together without Connie.

24 Q. So the network planning team had put together a plan for
25 JetBlue without Connie, correct?

1 **A.** Yes. We -- as mentioned earlier, we put together
2 multiple plans.

3 **Q.** And you understood that comparing that network planning
4 team plan to the clean team's plan with Connie would be an
5 apples-to-apples comparison of what JetBlue would look like
6 with the Northeast Alliance versus what JetBlue would look
7 like without the Northeast Alliance, correct?

8 **A.** I don't know if I would characterize it as an
9 apples-to-apples comparison, given the sheer number of
10 different possibilities that we were looking at, but we knew
11 that we needed to at least have the vision of the clean team
12 to compare against some sort of baseline or a combination of
13 potential baselines to see what the growth would look like.

14 **Q.** And that baseline would be JetBlue in 2023, without the
15 Northeast Alliance, correct?

16 **A.** Yes. Certainly without -- without the Northeast
17 Alliance.

18 **Q.** You weren't involved in the final presentation to the
19 Justice Department, correct?

20 **A.** No.

21 **Q.** So you may not be the right person to tell us what
22 happened to these comparisons at the end of the day, correct?

23 **A.** So this was for the Justice Department? I didn't even
24 know that this was referring to a presentation for the
25 Justice Department.

1 **Q.** I'll move on.

2 **A.** Okay.

3 **Q.** Let's take a look at PX535, which is in evidence. PX535
4 is an e-mail chain between you and Andrea Lusso, from
5 June 8th and 9th, 2020, correct?

6 **A.** Yes, it appears so.

7 **Q.** Please take a look at the second half of the first page,
8 which is your e-mail to Mr. Lusso, on June 8th, 2020, at
9 5:26 p.m. Are you with me?

10 **A.** Yes.

11 **Q.** On the second page of this e-mail, you send a list of
12 things for the two of you to discuss, correct?

13 **A.** Yes.

14 **Q.** And the fourth bullet point says "SBD work." Do you see
15 that?

16 **A.** Yes.

17 **Q.** "SBD work" here is shorthand for JetBlue's clean team?

18 **A.** Yes. Strategy and business development.

19 **Q.** And was that a shorthand in this e-mail for JetBlue's
20 clean team?

21 **A.** Yes.

22 **Q.** You wrote, "SBD work: At first from a revenue
23 perspective, I was worried we were giving credit to new
24 routes we were considering anyway."

25 That's what you wrote?

1 **A.** Yes. This goes back to what we were just discussing
2 about the incrementality of the NEA.

3 **Q.** And you were concerned that in calculating the benefits
4 of the Northeast Alliance, the clean team was including
5 benefits that JetBlue was already planning to achieve,
6 correct?

7 **A.** My concern was that what I was looking at was a P&L
8 output of the full NEA, most of which has been already
9 implemented through JetBlue, right? There's an incremental
10 20 flights a day out of Boston. There's an incremental 36
11 flights out of LaGuardia, and incremental 20 flights out of
12 JFK. But the vast majority has already been implemented. So
13 I wanted to make sure that we were looking at the pure
14 incrementality contribution of the NEA, not just the overall
15 P&L of the NEA.

16 **Q.** And you were concerned that the clean team was including
17 benefits that JetBlue was already planning to achieve,
18 correct?

19 **A.** In -- I wouldn't characterize it as that, despite how
20 it's written. I was worried that while we were always
21 planning, for example, in Boston, to go from 180 to 200, we
22 know that benefit, that was being calculated in the SBD
23 calculations. I wasn't concerned about that. We already
24 knew that benefit. We were on our way to doing that
25 beforehand. We didn't have the planes to do it because we

1 deferred them. But we knew what that benefit was.

2 I wanted to know the incremental benefit of the
3 next 20 that we were adding as part of the NEA.

4 **Q.** I think I understand what you were looking for,
5 Mr. Freidman. I'm asking, you were concerned that the clean
6 team wasn't looking at that incremental benefit because the
7 clean team was considering benefits that JetBlue was already
8 planning to achieve, correct?

9 **A.** They had not -- they would needed -- they would have
10 needed that baseline, which is very difficult to create, and
11 the NEA, P&L modeled the two P&Ls together and showed the
12 incremental difference. That's what they would have needed
13 to provide.

14 **Q.** And was that a yes to my question, that the clean team --
15 you were concerned that the clean team was including benefits
16 that JetBlue was already planning to achieve?

17 **A.** I was concerned that we weren't getting the clear NEA
18 incremental benefit, and they were -- yeah, no, I'll leave it
19 at that.

20 **Q.** Was that a yes?

21 MR. SCHWED: Objection. Asked and answered.

22 THE COURT: Sustained.

23 BY MS. MCDONOUGH:

24 **Q.** As we discussed -- well, sorry.

25 In your e-mail to Mr. Lusso, you write that, "The

1 five-year plan confirmed that there were a number of markets
2 in the clean team analysis that JetBlue was going to enter
3 anyway," correct?

4 **A.** Right. This goes back to having been at 180 flights a
5 day, getting to 220. We were going to get to 200. So there
6 was an element of markets that were going to happen
7 regardless on our path from 180 to 220, that we were trying
8 to get to 200 before then.

9 **Q.** And in the last sentence you write, "The plans we sent
10 show that we were planning to enter many markets anyway,"
11 right?

12 **A.** That is what's written and corresponds to what I said.

13 **Q.** You said that there were many markets in your five-year
14 plan that were also part of the Northeast Alliance, correct?

15 **A.** By definition, they would have had to have been, right?
16 It's the NEA facilitates incremental growth, so the growth
17 that we had already planned would be part of the NEA, and
18 then there would be more to the NEA.

19 **Q.** And you're telling this to Mr. Lusso, because you want
20 him to know that what the clean team is doing is not an
21 apples to apples comparison, correct?

22 **A.** I just wanted to know the incremental difference of the
23 NEA. That's the calculation I was really looking for.

24 **Q.** Okay. Let's take a look at PX527 in your binder.

25 Your Honor, this is in evidence. The attachment is sealed,

1 but we'll just be looking at the cover e-mail.

2 BY MS. MCDONOUGH:

3 Q. The top e-mail on this chain is an e-mail between you and
4 Nicholas Han, on June 23, 2020; is that right?

5 A. Yes.

6 Q. And the subject is, "Re: Five-Year Plan Summaries"?

7 A. Yes.

8 Q. And the attachment is "five-year plan, 6/23/2020,"
9 correct?

10 A. Yes. Which I think was different from the previous
11 five-year plan that we looked at before, correct?

12 Q. Is that --

13 A. Sorry, I just -- okay.

14 Q. Okay. Let's take a look at the very bottom of the second
15 page, and on to the third page, at your e-mail to Mr. Lusso,
16 at 10:06 p.m. Do you see that?

17 A. Beginning with, "I have another question."

18 Q. Most of the e-mail is on the third page, we'll pull it
19 up. The very top of the header is on the bottom of the
20 second page. If you look at the body of the e-mail, I'll
21 point you to it, if you look at the body of your e-mail to
22 Mr. Lusso, you and Mr. Lusso had had a one on one meeting
23 that day, correct?

24 A. Yes.

25 Q. Mr. Lusso had asked you for slides outlining five-year

1 plan growth?

2 **A.** Yes.

3 **Q.** Let's take a look at the bottom of the second page to
4 Mr. Lusso's response to you. Mr. Lusso asked you to compare
5 the five-year plan with Connie and without Connie. Do you
6 see that?

7 **A.** Yes.

8 **Q.** And with the current delivery plan for JetBlue's aircraft
9 versus with the network plan -- with the network planning
10 team's proposed delivery plan. Do you see that?

11 **A.** Yes, as you can see, there's multiple branches of this
12 planning process now.

13 **Q.** Looking up at the same page at your response to Mr. Lusso
14 on June 19th at 9:29 a.m. --

15 MS. MCDONOUGH: Thank you.

16 BY MS. MCDONOUGH:

17 **Q.** In the first paragraph, you write "I have another
18 question on this and it relates back to the JFK slot pair
19 question." Correct?

20 **A.** Yes.

21 **Q.** You write, "In our five-year plan, we built in additional
22 JFK slot pairs, assuming we'd get them. Now that these plans
23 are being evaluated by the board/senior leadership team, I
24 think it would be confusing to show both Connie and nonConnie
25 five year plans with the same-ish number of JFK departures ."

1 That's what you wrote?

2 **A.** Yes, so as I discussed, there's multiple iterations of
3 this plan. These plans have, in some ways, been aspirational
4 over time, and one of the things that we've always built into
5 these five year plans was growth into JFK. It was never
6 really clear how that growth into JFK would actually
7 manifest. Right? Just the other day, United exited JFK
8 routes because they couldn't get more slots. It's extremely
9 difficult to grow at JFK, but we was always built it into our
10 plan because that was our aspiration to do so. I thought it
11 would be confusing to show JFK growth because of our
12 aspiration to grow at JFK, and then to compare it to a plan
13 that actually had growth at JFK. I think we needed to show
14 people that, actually, this is our shot to grow at JFK, the
15 NEA.

16 **Q.** The network planning team's five-year plan, without the
17 Northeast Alliance, built in additional slots at JFK,
18 assuming you'd get them, correct?

19 **A.** That was one iteration of a -- of the plan that was of
20 many, and that ultimately didn't manifest.

21 **Q.** Mr. Freidman, please take a look at tab one of your
22 binder, which is the transcript from December 21, 2020.
23 Please turn to page 220. I'd like to direct your attention
24 to page 220, line 7 to 13. The question was:

25 "QUESTION: So the network planning team's

1 five-year plan built in additional JFK slot pairs, assuming
2 that JFK would get them somehow; is that right.

3 "ANSWER: Yes, it was building in an optimistic or
4 reasonable amount of slot pairs, assuming we were always on
5 the hunt for them."

6 That was your sworn testimony?

7 THE WITNESS: Yes.

8 MS. MCDONOUGH: Your Honor, plaintiffs move to
9 admit page 220, line 7 through 13, as a party admission.

10 MR. SCHWED: Your Honor, I have no objection to the
11 admission, but I do want to point out that this is at least
12 the second time they've read something into the record that's
13 not at all inconsistent with his testimony and I just want to
14 be on the record with that.

15 THE COURT: I'll admit it and yes -- not everything
16 that has been admitted has been inconsistent.

17 BY MS. MCDONOUGH:

18 **Q.** Mr. Freidman, here you thought it would be confusing to
19 show the board with the five-year plan with those additional
20 JFK departures that you assumed you would get because that
21 plan would look very similar to the plan with the Northeast
22 Alliance, correct?

23 **A.** As I mentioned earlier, the aspirational nature of some
24 of the plans that we put into the five-year plan file, in
25 route planning, always assumed somehow we would try -- we

1 would be successful in gaining slots, right? We have been
2 successful through the NEA, United as of last week was
3 unsuccessful. They exited JFK, LAX, and San Francisco.

4 THE COURT: Oh, they exited the JFK to San
5 Francisco route.

6 THE WITNESS: Correct, yes.

7 MR. SCHWED: I think he said JFK-LAX and JFK-San
8 Francisco.

9 THE WITNESS: Yes, Your Honor.

10 THE COURT: I see.

11 THE WITNESS: Two different routes, from JFK-LAX
12 and JFK-San Francisco.

13 THE COURT: Okay.

14 THE WITNESS: I apologize, I lost my train of
15 thought. But --

16 Can you ask the question again? I apologize.

17 MS. MCDONOUGH: I'll move on. I think we've
18 covered it.

19 THE WITNESS: Okay.

20 BY MS. MCDONOUGH:

21 **Q.** Let's look at Mr. Lusso's e-mail, above this one, to you
22 at 11:33 a.m. Do you see that?

23 **A.** Yes.

24 **Q.** Mr. Lusso writes, "I'm okay with this. Base, no Connie,
25 includes the 16 pairs from AA."

1 Do you see that?

2 **A.** Yes, I see that.

3 **Q.** Those are the 16 pairs of JFK slots that JetBlue had
4 leased from American, before the Northeast Alliance, correct?

5 MR. SCHWED: Objection. He's already testified as
6 to a lack of foundation as to the status of that lease.

7 THE COURT: He testified to this e-mail before?

8 MR. SCHWED: No, but, Your Honor, he's already
9 testified that he was not involved in the negotiations, and
10 he knew there was some discussions but he didn't know the
11 legal status of that.

12 THE COURT: Okay.

13 MR. SCHWED: Of that discussion.

14 THE COURT: Okay. Sustained.

15 BY MS. MCDONOUGH:

16 **Q.** Mr. Freidman, did you understand Mr. Lusso's e-mail to
17 mean that the 16 pairs from AA that he refers to should be a
18 part of the base, no Connie plan that he had asked for?

19 **A.** In the e-mail chain that we had just discussed, though,
20 we had agreed that the baseline foundation was without this
21 deal, which ultimately never had manifest. So I'm a bit
22 unclear on the discrepancy. But ultimately, the next
23 iteration of the plan did not have these built in, and to my
24 knowledge, these were not executed. We did not fly them. We
25 did not -- I actually don't know what happened to these

1 16 pairs or this deal.

2 **Q.** Let's turn back to Mr. Lusso's e-mail earlier in time,
3 where he asks -- Mr. Lusso asks for a comparison of with
4 Connie network plan, and without Connie. Do you see that?

5 **A.** Yes.

6 **Q.** Okay. Now let's turn back to Mr. Lusso's other e-mail.
7 Do you understand this instruction to you in his e-mail to
8 mean that the 16 pairs from AA should go into the nonConnie
9 version of that comparison?

10 **A.** At that point in time, I guess that's what he's asking me
11 to do. At a different point in time, maybe the deal had come
12 undone, and we -- the plan changed again.

13 **Q.** Here Mr. Lusso is agreeing with you that the 16 pairs
14 from American should be part of the base, no Connie,
15 stand-alone plans, correct?

16 **A.** At this point in time. But I believe we just went over
17 the different e-mail where the plan had changed, and I'm not
18 sure that this was ever executed upon.

19 **Q.** At this point in time, Mr. Lusso and you agreed that --
20 or you -- excuse me.

21 At this point in time, you understood that those
22 16 pairs from American would not be incremental growth
23 attributable to the Northeast Alliance, correct?

24 MR. SCHWED: Objection. Misstates.

25 MS. MCDONOUGH: I'm not asking anything about the

1 document.

2 THE COURT: I'm overruling the objection because
3 he's not -- he can answer, if that's what he understands.

4 THE WITNESS: During this -- during this time, for
5 the five-year plan attachment that was referenced the first
6 time, we did action this request. And then in the second
7 file, which was a different file, we changed the plan, and it
8 no longer included the 16 pairs from AA because I don't think
9 they were on the table. I don't know what happened.

10 BY MS. MCDONOUGH:

11 Q. Mr. Freidman, you -- we spoke earlier about how you were
12 looking for incremental growth -- that you were trying to
13 understand the incremental growth that the Northeast Alliance
14 might provide, correct?

15 A. Yes.

16 Q. You wanted that incremental growth, but the clean team
17 didn't provide it, correct?

18 A. Let me just rephrase my answer. The -- I wanted the
19 incremental value of the growth of the NEA. The clean team
20 did provide the incremental growth. They provided a growth
21 plan, and we could compare it against. We wanted the
22 incremental value of that growth plan, not necessarily the
23 incremental growth.

24 Q. Let me ask it that way. You wanted that incremental
25 value, but the clean team didn't provide it, correct?

1 **A.** Correct. I don't think we ever got that precisely from
2 them.

3 MS. MCDONOUGH: Okay. I pass the witness.

4 THE COURT: All right.

5 **CROSS-EXAMINATION BY COUNSEL FOR DEFENDANT JETBLUE**

6 BY MR. SCHWED:

7 **Q.** Mr. Freidman, you were just asked a question about what
8 the clean team did or did not provide with respect to
9 incremental value. Do you recall that?

10 **A.** Yes.

11 **Q.** Were you answering with respect to what they provided to
12 you personally or to anybody else?

13 **A.** I believe, in that e-mail chain, or in an e-mail chain,
14 Dave Fintzen says "We'll eventually have to get to that."
15 And then that was eventually provided.

16 **Q.** But when you said they didn't provide it, were you just
17 saying they didn't provide it to you?

18 **A.** Correct.

19 **Q.** You don't know what they provided to anyone else.

20 **A.** I know that they provided other figures to executive
21 leaders and kept people in the know for sure, yes.

22 **Q.** Can you describe your role, if any, in the implementation
23 of the Northeast Alliance?

24 **A.** Sure. So I lead a team that works directly with
25 American's network team, route planners, and schedulers to

1 implement the Northeast Alliance. Specifically, coming up
2 with which routes to fly, how many frequencies per day,
3 discussing with American Airlines which -- which airline
4 should fly which route. And in some instances, we would fly
5 both routes, which aircraft type, how many times a day,
6 things of that nature, the ultimate goal being to create the
7 most competitive network in New York City and Boston, as
8 possible. Certainly to compete better against Delta and
9 United.

10 **Q.** Are you the lead person from JetBlue, from a day-to-day
11 basis, in that effort?

12 **A.** I'd say I'm one of the lead people. There's folks
13 underneath me that are also working the day-to-day, as well.

14 **Q.** People who work for you within the route planning group?

15 **A.** Yes.

16 **Q.** And can you generally describe the process that you
17 undertake for this exercise of optimizing the network?

18 **A.** Sure. So about every one to two months, the teams get
19 together to work on what we call the steady state plan.
20 We're looking at the largest markets served from both New
21 York City and Boston, seeing which ones we serve, which ones
22 we don't, and constantly analyzing how we can change those
23 routes and those frequency levels accordingly.

24 **Q.** You mentioned something called the "steady state plan."
25 Can you describe what that is?

1 **A.** Yes, the steady state plan is an ever involving document,
2 which represents where we want the NEA to be from a route
3 perspective, frequency level perspective, into perpetuity,
4 right? Two or three years for now into the future.

5 **Q.** And is that something you're trying to achieve?

6 **A.** Yes. Absolutely.

7 **Q.** In your meetings with American, do you discuss the routes
8 within the NEA on a route by route basis?

9 **A.** Yes, we do.

10 **Q.** And putting aside carve-outs, do you discuss all routes
11 within the Northeast Alliance with American?

12 **A.** Within the Northeast Alliance, Boston to New York City,
13 excluding the carve-outs, yes.

14 **Q.** And do you have an ultimate objective in this process?

15 **A.** Yes. So the objective is to create the most competitive
16 network possible in New York City and in Boston, which have
17 been historically very constrained for two different reasons.
18 Slot constraints in New York City and gate and ground
19 constraints in Boston.

20 **Q.** And there's been -- going back to the steady state,
21 there's been a lot of discussion about a clean team schedule.
22 Do you recall that?

23 **A.** Yes.

24 **Q.** Does the steady state that you've described have any
25 relationship to the clean team schedule?

1 **A.** The only relationship that exists is when we began the --
2 our own organic steady state planning process. We had the
3 clean team plan to compare against. But ultimately the two
4 plans are different, some similarities, but also very
5 different.

6 **Q.** And which team within JetBlue is responsible for the
7 steady state and achieving it?

8 **A.** There are multiple teams involved in executing the NEA,
9 but route planning and schedule planning between American and
10 JetBlue ultimately work together to create that steady state
11 document.

12 **Q.** Now, you mentioned that one of the -- one of the things
13 that you're trying to assess for a given route is which of
14 the two airlines flies that route or which combination. What
15 factors go into that decision?

16 **A.** Yeah, so there are quite a few different factors, one
17 would be the customer type, the point of sales strength on
18 that route, the competitive environment for that particular
19 route. Is that route require regional aircraft, or a main
20 line aircraft, regional being the smaller aircraft, mainline
21 being the larger aircraft, multiple different factors that
22 could go into it, and we discuss them all.

23 **Q.** Another thing you mentioned is that you're trying to
24 optimize the schedule. And what do you mean by that?

25 **A.** Yeah. We -- in terms of optimizing the schedule, there's

1 two different things that we do there. One would be
2 optimizing connectivity between the two carriers, and also
3 ensuring that on overlap routes that we both serve, we stay
4 away from what we call the wing tips, which is having one
5 departure basically be on top of another departure. So
6 working together, we can ensure that the schedule is spread
7 throughout the day, that we don't have the same departure
8 times. We're offering as much customer choice throughout the
9 day as possible. And then getting back to the connectivity
10 piece, we work together to optimize the slot portfolios to
11 ensure that JetBlue's network, as well as America's network
12 can connect into the long-haul network offering that American
13 has out of JFK.

14 We've had a significant number of partners at
15 JetBlue, but the global presence that American can provide on
16 top of that helps us better compete, and the NEA, as a whole,
17 compete better against Delta and United's global reach out of
18 New York City, as well.

19 **Q.** Well, why does JetBlue need to coordinate with American
20 to increase connectivity with its international network.
21 Isn't -- can't JetBlue for example just adjust its schedule
22 to known schedules of American?

23 **A.** So one, I think we have to work together to optimize
24 which markets connect in to American Airlines's bank, and we
25 also have to work around one of the larger constraints about

1 slots. Right? The NEA is allowing us to grow our slot
2 portfolio, but it's also allowing us to optimize within the
3 existing slot portfolio, to ensure that when we want a
4 certain origin blue city to connect to the JFK transatlantic
5 bank, or into Athens, or Delhi, that it can do so. And if we
6 don't have the right slot time, we can work with American to
7 ensure that we have that slot time.

8 **Q.** You used a few pieces of terminology and --

9 THE COURT: Last question, okay.

10 MR. SCHWED: A lot of terminology. But
11 "transatlantic bank," I believe is the word you used?

12 **A.** Yeah, so American has a large number of departures
13 leaving relatively, you know, over the course of one to two
14 hours, maybe three hours, all kind of grouped together. So
15 when you want -- you're trying to get, for example, Nashville
16 customers to maximize choice to transatlantic destinations,
17 you'd want a JetBlue national flight to fly into JFK at a
18 certain time to hit that departure window, where all of those
19 American departures are set to fly.

20 **Q.** And before the NEA, did JetBlue have adequate slots to do
21 that, even if it knew exactly what time every flight was
22 leaving?

23 **A.** If we did have a connection, it would have been
24 coincidental, and it could easily have been disrupted without
25 the ability to optimize together.

1 **Q.** And how is JetBlue's slot portfolio during the peak times
2 for making connections?

3 **A.** As you can imagine, JFK, being an international airport,
4 it is a fairly constrained time period to acquire slots.

5 **Q.** And at one point you mentioned the phrase "blue city."
6 What is that?

7 **A.** Blue city is our term for a city that is not a focus
8 city. Other carriers would refer to it as a spoke.

9 **Q.** But it's a city where JetBlue has a presence?

10 **A.** Yes.

11 **Q.** And then I think you said something like you want to know
12 which markets are best to connect, or something like that.
13 What are you trying to do there?

14 **A.** Which origin points. So let's take New Delhi as an
15 example. There's obviously a lot of demand from New York to
16 go to India. But we -- we can also look at public data that
17 shows us what other origins across the United States have the
18 most demand to India, as well. So we wanted to ensure that
19 we are providing enough service and enough connectivity to
20 those main demand centers over New York City to help the NEA.

21 THE COURT: I think we've got to adjourn for the
22 day here.

23 All right. Have a great weekend. I'll see you --
24 do you know Monday is a federal holiday? I'll see you
25 Tuesday morning, 9:00 a.m. Have a nice weekend.

(Court in recess at 4:34 p.m.)

C E R T I F I C A T I O N

I certify that the foregoing is a correct transcript of the record of proceedings in the above-entitled matter to the best of my skill and ability.

/s/ Rachel M. Lopez

October 6, 2022

/s/ Robert W. Paschal

Rachel M. Lopez, CRR

Date

Robert W. Paschal, RMR, CRR

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